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No. 98-106

FILED
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SUPREME COURT, U.S.

In the
SUPREME COURT OF THE UNITED STATES
October Term 1997

DORIS L. SASSOWER,

Petitioner,

- against -

HON. GUY MANGANO, PRESIDING JUSTICE OF THE APPELLATE DIVISION, SECOND DEPARTMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK, and the ASSOCIATE JUSTICES THEREOF, GARY CASELLA and EDWARD SUMBER, Chief Counsel and Chairman, respectively, of the GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT, Does 1-20, being present members thereof, MAX GALFUNT, being a Special Referee, and G. OLIVER KOPPELL, Attorney General of the State of New York, all in their official and personal capacities,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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"*Taking a Firm Hand in Discipline*", ABA Journal, Vol. 84, September 1998, p. 24

INTRODUCTION

This supplemental brief presents supervening facts, reinforcing the Court's duty to grant certiorari under its "supervisory power", as well as its duty under codes of professional conduct to refer the subject federal judges and New York's Attorney General ["the A.G."], counsel to respondents and himself a respondent, for disciplinary and criminal investigation. These facts include:

(1) the A.G.'s August 4, 1998 waiver [SA-9];

(2) the U.S. Solicitor General's inappropriate August 10, 1998 response [SA-10] to petitioner's July 20, 1998 letter seeking his *amicus* support and his non-response to her included request for disciplinary and criminal referral of the subject federal judges and the A.G. [SA-11];

(3) the U.S. Justice Department Public Integrity Section's non-response to petitioner's July 27, 1998 letter requesting criminal investigation of the involved public officials [SA-47]; and

(4) the House Judiciary Committee's inaction on petitioner's requests for impeachment investigation of the subject federal judges, as highlighted by the written statement of the Center for Judicial Accountability, Inc. (CJA)[1] in connection with the House Judiciary Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary" [SA-17].

The supervening facts relating to the Solicitor General, Justice Department, and House Judiciary Committee demonstrate a complete breakdown of checks on federal judicial misconduct by the Executive and Legislative Branches -- paralleling the breakdown of checks within the Judicial Branch, detailed in the cert petition and supplemented by CJA's aforesaid written statement [SA-21, SA-25-27]. This, combined with the dereliction of the organized bar [SA-90; SA-102], empirically rebuts the "all's well" conclusions of the 1993 Report of the National Commission on Judicial Discipline and Removal as to the efficacy of existing mechanisms to restrain federal judicial misconduct -- conclusions adopted by the Judicial Conference in its 1995 Long-Range Plan (at 88-89). The reality, concealed by these government

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[1] Petitioner is CJA's co-founder and director, as identified at fn. 8 of the cert petition (at p. 16).

documents, but exposed herein, is that the constitutional protection restricting federal judges' tenure in office to "good behavior" does not exist because all avenues by which their official misconduct and abuse of office might be determined and impeachment initiated (U.S. Constitution, Article III, §2, Article II, §4 [SA-1]) are corrupted by political and personal self-interest. The consequence: federal judges who pervert, with impunity, the constitutional pledge to "establish Justice", (Constitution, Preamble [SA-1]) and who use their judicial office for ulterior purposes.

Such supervening facts call for the Court to protect the public by reasserting the constitutional protection of "good behavior" and by reinforcing the ethical duty to report attorney and judicial misconduct. This duty is reflected in Rule 8.3 of the ABA's Model Rules of Professional Conduct [A-20], Canon 3D of its Model Code of Judicial Conduct [A-18], and Canon 3B(3) of the Code of Conduct for U.S. Judges [A-17] -- provisions ignored by the lawyers and judges whose derelictions are the subject of this supplemental brief.

The significance of these reporting obligations and the failure of lawyers and judges to meet them have been discussed in scholarly commentary, *inter alia*, Thode, "*The Duty of Lawyers and Judges to Report Other Lawyers' Breaches of the Standards of the Legal Profession*, 1 Utah Law Review 95-102 (1976); Levy, "*The Judge's Role in the Enforcement of Ethics -- Fear and Learning in the Profession*", 22 Santa Clara Review 95-116 (1982), and noted in ABA guide materials, including its "Standards for Imposing Lawyer Discipline" (1992 ed., Preface, at 4). They have also been the subject of discussion and recommendation by the ABA's Special Committee on Evaluation of Disciplinary Enforcement, chaired by former Associate Justice Tom Clark, as well as by the ABA's Commission on Professionalism, formed in response to a recommendation from then Chief Justice Warren Burger that the ABA study professionalism issues. To foster reporting, both the 1970 Clark Committee Report and the 1986 Report of the Commission on Professionalism, the latter reprinted at 112 F.R.D. 243, proposed that "proceedings be brought in appropriate cases against lawyers who fail [to report misconduct]", *id*, at 287-288. At bar is such "appropriate case", where the unreported attorney and judicial misconduct has completely subverted federal judicial/appellate/and disciplinary processes and the attorneys who have failed in their reporting duties are at the highest levels of

power and influence, in government and out.

This Court's pivotal role in sensitizing the legal community and up-and-coming lawyers to ethical obligations -- including the obligation to report professional misconduct -- is highlighted in "*The Judge's Role in the Enforcement of Ethics*", *op cit*:

> "...One sensible place to begin is at the top. The Supreme Court's opinions are the primary written source of teaching and learning in the legal profession, both during and after law school. Also, one would assume that the Justices are judicial role models... If the Supreme Court started the process of openly commenting on ethical issues inherent in their cases, other courts would follow. Without leadership or a role model there will be no movement." (at 114-116)

This case dispositively proves that there is no "leadership" or "role model" from any governmental quarter -- nor from the organized bar -- to meet the professional responsibilities that arise in the face of serious judicial misconduct and the non-function of judicial oversight mechanisms. Rather there is hostility and silence. Consequently, without this Court's intervention, the public and the few whistle-blowing lawyers, like petitioner, who take their reporting and other ethical obligations seriously, will remain wholly unprotected from the obliteration of the rule of law and of constitutional guarantees that the record herein demonstrates.

THE ATTORNEY GENERAL'S WAIVER

In the ordinary case, where respondents waive their right to oppose a petition for a writ of certiorari, a supplemental submission may be unnecessary. This, however, is not an ordinary case and respondents' counsel is not an ordinary lawyer, but a public officer, tainted by multiple conflicts of interest.

Particularized by the petition is official misconduct by Second Circuit judges, who knowingly obliterated *all* cognizable adjudicatory and ethical standards and rendered fraudulent decisions to protect high-ranking state defendants, New York state judges and the A.G., sued for corruption and civil rights violations under 42 U.S.C.§1983 and §1985. The petition chronicles how these state defendants,

represented by the A.G. -- New York's highest legal officer -- were permitted to engage freely in litigation misconduct, including fraud, at all stages of the action: before the district judge, in the appellate case management phase, and on the Second Circuit appeal. As emphasized by the petition, the A.G. employed such litigation misconduct and fraud because he and his co-defendant clients had no legitimate defense to the verified Complaint's material allegations [A-49-94] -- allegations establishing the unconstitutionality of New York's attorney disciplinary law, as written and as applied [A-120-131].

This Court's Rule 15.2 is very specific as to the purpose of a brief in opposition:

> "In addition to presenting other arguments for denying the petition, the brief in opposition should address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. ..."

Consequently, by his waiver [SA-9], the A.G. has conceded, *inter alia*, the truth of the petition's factual recitation of criminal conduct by federal judges and by state public officials, including himself, and the validity of the petition's legal arguments addressed thereto. These arguments are set forth in Point I of "*Reasons for Granting the Writ*" (at pp. 23-26) as to the Court's "supervisory" duty under its Rule 10[.1](a), and its duty, under codes of professional conduct, to make disciplinary and criminal referrals, even were it not to grant review.

Among the code provisions cited and reproduced in the appendix [A-20] is Rule 8.3 of the ABA's Model Rules of Professional Conduct, mandating the reporting of serious attorney and judicial misconduct to "the appropriate authority". Thomas D. Hughes, Esq., who signed the waiver [SA-9], is not only a member of the U.S. Supreme Court bar, but an Assistant Solicitor General for the A.G. As such, he can be presumed to know that the Court relies on the ABA Model Rules of Professional Conduct as a general standard. Moreover, the New York State Bar Association's Code of

Professional Responsibility, DR-103, adopted by New York's Appellate Divisions as 22 NYCRR §1200.4 [SA-6], mandates the reporting of attorney misconduct "to a tribunal or other authority". Its DR 7-102(B)(2) – 22 NYCRR §1200.33 [SA-8] – explicitly requires a lawyer to reveal "fraud upon a tribunal". The A.G., whose statutory duty it is to protect "the public interest", "public safety", and "public justice" (New York Executive Law, Article 5, §63, ¶8 [SA-2]) and who is independent of the constraints that inhibit private lawyers from reporting judicial misconduct, can be expected to recognize an obligation to report and reveal fraud perpetrated by the tribunal.

The A.G.'s reporting obligations to this Court were triggered once his office determined the accuracy of the petition's factual and legal assertions of fraud and corruption by attorneys and judges, particularly federal judges under this Court's "supervisory power". Unless he was prepared to report the misconduct to some other "authority" or "tribunal", as he was required to have done long ago, his duty was to endorse the petition's request for the Court's "supervisory" review and its alternate request for the Court to make disciplinary and criminal referrals, including referral of the subject federal judges to the House Judiciary Committee and Public Integrity Section of the Justice Department. Such endorsement was all the more essential since, prior to the waiver, petitioner had sent the A.G. copies of her July 20, 1998 letter to the Solicitor General [SA-11] and her July 27, 1998 letter to the Public Integrity Section [SA-47]. Those letters presented an evidentiary record of nonfeasance and misfeasance by the House Judiciary Committee, as well as by the Public Integrity Section – making impeachment and criminal investigation unlikely, absent Supreme Court action, be it by review or referral.

Compromising the A.G.'s affirmative obligations to this Court is his disqualifying conflict of interest, born of his own culpability and that of his assistants for the long course of defense misconduct summarized by the petition (at pp. 4-17). But for his misconduct on the state level, in the context of petitioner's Article 78 proceeding against the judicial defendants, the state judicial corruption, which is the subject of petitioner's verified Complaint, would have been arrested at the state court level. But for the A.G.'s defense misconduct in federal court, the corruption of the federal judicial process could not have occurred – and, certainly, not to the far-reaching extent it has. The A.G.'s multiple conflicts of interest herein,

as a defendant representing his co-defendants and doing so in both their individual and personal capacities, while, at the same time he is "the People's Attorney", charged with protecting the public, were raised by petitioner before the lower federal courts [A-160; SA-66; SA-74] -- and ignored by those courts. This has now emboldened the A.G., who never responded to petitioner's conflict of interest objections, to once more disregard them. Indeed, Mr. Hughes should have recognized that he was disqualified from signing the waiver, based on his prior knowledge of, and involvement in, the fraud and corruption the petition detailed.

Nearly a year and a half ago, Mr. Hughes' name, as the A.G.'s Assistant Solicitor General, appeared on the cover of appellees' "corrected" brief in opposition to petitioner's Second Circuit appeal. As pointed out in the cert petition (at pp. 15-16), appellees' opposing brief was a sanctionable deceit. Indeed, petitioner so informed Mr. Hughes at the time, providing him with corroborative documentation so that he could take immediate corrective steps. Such documentation consisted of: (1) petitioner's fact-specific reply brief, supported by record references, demonstrating that appellees' opposing brief made a mockery of ABA Model Rules of Professional Conduct, Rule 3.1 "Meritorious Claims and Contentions" and Rule 3.3, "Candor Toward a Tribunal" [SA-3-4]; and (2) her simultaneously-filed sanctions motion, further particularizing the A.G.'s fraud and misconduct in the appellate case management phase, apart from appellees' opposing brief. Yet, Mr. Hughes' stated view was that he had no obligation to take corrective action and that "it was for the Court, rather than himself, to examine the misconduct and fraud issues relative to the Appellees' Brief on which his name appear[ed]." [SA-72, ¶54; SA-75, ¶2; and SA-77, ¶8]. Much as other lawyers in the A.G.'s office, including the A.G. himself, had previously taken no corrective steps after petitioner advised them of the office's litigation fraud and misconduct before the district judge and of the district judge's fraudulent decision, so Mr. Hughes took no corrective steps. The result: the Second Circuit corrupted the appeal with its own fraudulent, record-falsifying decisions [A-21; A-32; A-33]. Like the district judge's decision, these also ignored, without comment, the A.G.'s fraud and misconduct -- including his mandatory duty under DR-104[illegible] "Responsibilities of a Supervisory Lawyer", 22 NYCRR §1200.5 [SA-6-7]. Such rule is the only one in the country to impose

collective responsibility on law firms. *See*, "*Taking a Firm Hand in Discipline*", ABA Journal, Vol. 83, September 1998, p. 24. *See, also* ABA Model Rule 5.1, "Responsibilities of a Partner or Supervisory Lawyer" [SA-4]. This, in addition to ignoring New York's DR 1-102 (22 NYCRR §1200.3) [SA-5] and DR 7-102 (22 NYCRR §1200.33) [SA-8], as well as the A.G.'s transcending duty under EC-7-14 [SA-7] as "a government lawyer...[with] the responsibility to seek justice and to develop a full and fair record".

In signing the waiver, Mr. Hughes apparently retains the belief that he has no duty to take corrective steps and that he can disregard his own conflict of interest. This underscores the need for the Court to articulate the fundamental standards of conduct expected of lawyers appearing before it -- and before the lower federal courts.

The Court's waiver form, as signed by Mr. Hughes, expressly states that a response to the petition will not be filed "unless one is requested by the Court" [SA-9]. Under the circumstances, the A.G. should be requested to respond. He should be called upon to identify why, with other attorneys in his Solicitor General's office presumably able to sign the waiver, Mr. Hughes was its signator, notwithstanding his personal involvement in the fraud recited by the petition, and to explain why he has taken no corrective steps based on the concessions implicit in the waiver. These steps would properly include: (1) initiating criminal and disciplinary investigation of the federal judges and state officials who corrupted the federal judicial/appellate/ disciplinary processes in this case; (2) investigating petitioner's allegations that the A.G.'s office, as a *modus operandi*, engages in litigation fraud, in state and federal courts, to defend state judges and other public officials and agencies, when it has no legitimate defense [A-261-268]; and (3) vindicating petitioner's uncontroverted factual and legal showing of the unconstitutionality of New York's attorney disciplinary law, as written and as applied to her [A-120-131]. This includes consenting to *immediate* vacatur of his judicial co-defendants' June 14, 1991 "interim" order suspending petitioner's law license [A-97].

THE NONFEASANCE AND MISFEASANCE OF ALL THREE GOVERNMENT BRANCHES AND THE ORGANIZED BAR

As reflected by the cert petition (at p. 24), because of the

Second Circuit's annihilation of anything resembling a judicial process and its corruption of appellate and disciplinary remedies, petitioner long ago supplied a copy of the record to the Administrative Office of the U.S. Courts for presentment to the Judicial Conference and, likewise, to the House Judiciary Committee. This was done so that the Judicial and Legislative Branches of our government could exercise oversight -- not only on petitioner's behalf, but on behalf of the public, endangered by federal judicial corruption and by judicial subversion of the very congressional statutes designed to protect the public from biased and unfit federal judges -- 28 U.S.C. §§144 and 455, relating to judicial disqualification, and 28 U.S.C. §372(c), relating to judicial discipline [A-2-5].

The petition recited (at p. 24) the response of the Administrative Office: it not only refused to make the requested presentment to the Judicial Conference for oversight intervention, but failed to respond to letters or return phone messages inquiring about such presentment.

Not recited was the response of the House Judiciary Committee to CJA's two Memoranda that accompanied transmittal of the record to it [A-295; A-301]: a non-response whose unmistakable deliberateness only became evident after the petition's May 16th filing date, in the context of attempts to meet with the Courts Subcommittee Chief Counsel and to secure the opportunity to testify at its June 11, 1998 "oversight hearing on the administration and operation of the federal judiciary".

The House Judiciary Committee's wilful failure to discharge its duty of "oversight" over federal judicial misconduct -- either by investigating the judicial misconduct complaints it receives or by ensuring the integrity of the federal judiciary's handling of complaints filed under 28 U.S.C. §372(c) and judicial enforcement of 28 U.S.C. §§144 and 455 -- is recounted in CJA's written statement to the House Judiciary Committee for inclusion in the record of the June 11, 1998 hearing [SA-17]. This was so identified by petitioner in her July 20, 1998 letter to the U.S. Solicitor General [SA-13], which enclosed a copy of that statement and its corroborative evidentiary

compendium[2] so that the Solicitor General could "act on behalf of the otherwise unprotected public" [SA-13].

Petitioner's July 20, 1998 letter to the Solicitor General [SA-11] highlighted that the same reasons warranting the Court's granting the petition warranted his *amicus* support at the certiorari stage, and that, like the Court, which, if it did not grant the petition, would still have a duty under ethical codes to make disciplinary and criminal referrals of the subject federal judges and A.G. for "fraud, collusion, and conspiracy", he, too, was bound by ethical codes to make such referrals -- "separate and apart from [his] duty to support Supreme Court review". The letter stated that a copy of the record, identical to that previously sent to the Administrative Office and House Judiciary Committee, was being sent to the Justice Department's Public Integrity Section so that it could initiate criminal investigation and prosecution, as well as facilitate its endorsement of the Solicitor General's *amicus* support of the petition. Petitioner pointed out that all three Branches had participated in the Report of the National Commission on Judicial Discipline and Removal and that, consistent with that Report, if the Public Integrity Section did not endorse the Solicitor General's *amicus* support and commence a criminal investigation, without necessity of the Court's referral, it should "identify the branch of government responsible for investigating the corruption of the federal judicial/appellate/disciplinary processes, established by the transmitted record, and...make the appropriate referral." [SA- 14].

Petitioner's July 27, 1998 letter to the Chief of the Public Integrity Section [SA-47], in addition to transmitting the record, chronicled a background of Justice Department inaction on her prior complaints of New York state judicial corruption and complicity by state agencies and officials, including the A.G.

By letter dated August 10, 1998 [SA-10] -- the same date on which petitioner had notified the Solicitor General's office of the A.G.'s waiver [SA-9] -- the Solicitor General purported to respond to her July 20, 1998 letter [SA-11]. Ignoring every fact-specific issue

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[2] The compendium to CJA's statement [SA-17] has been lodged with the Clerk of the Court, together with the exhibits to petitioner's July 27, 1998 letter to the Chief of the Public Integrity Section [SA-47], *infra*.

presented by the letter, most particularly that this was the exceptional case mandating the Solicitor General's *amicus* support and disciplinary and criminal referrals, petitioner was advised that the Solicitor General's "general policy" in cases to which the government is not a party, is not to opine as to "the views of the United States" unless invited to do so by the Court.

No response has been received from the Public Integrity Section. However, in an August 14, 1998 phone call to it, petitioner was informed that the box transmitting her July 27, 1998 letter with the cert petition and record had not even been opened.

Such conduct by the Executive Branch, in the face of petitioner's July 20, 1998 letter to the Solicitor General detailing the significance of the Legislative Branch's nonfeasance and misfeasance to Judicial Branch corruption, calls for the Court to "invite" the Solicitor General to present the United States' views not only of the petition, but of the information that letter presented. Since the Public Integrity Section has a copy of the record, the Solicitor General should also be requested to incorporate a report of its findings relative to the petition's recitation of Second Circuit corruption.

Indeed, since the Administrative Office [SA-79; SA-27], the House Judiciary Committee [A-301], the Commission on Structural Alternatives for the Federal Courts of Appeals [SA-35], and the American Bar Association [SA-96; SA-106] also have copies of the record and cert petition, the Court might reasonably invite them to offer their views, including of their ethical and professional obligations with respect thereto, as lawyers, public officials, or both.

CONCLUSION

For the transcending reasons of governmental and professional integrity hereinabove recited, response to the petition and this supplemental brief should be requested from the New York State Attorney General and invited from the U.S. Solicitor General, among others. In any event, the cert petition must be granted and criminal and disciplinary referrals made so as to vindicate constitutional guarantees, the rule of law, and fundamental ethical precepts.

Doris L. Sassower

DORIS L. SASSOWER, Petitioner *Pro Se*

SUPPLEMENTAL APPENDIX

CONSTITUTION OF THE UNITED STATES

Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article II, Section 4.

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, and other high Crimes and Misdemeanors.

Article III, Section 1.

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

NEW YORK'S EXECUTIVE LAW

ARTICLE 5. DEPARTMENT OF LAW

Section 63 . General Duties.

The attorney-general shall...

8. Whenever in his judgment the public interest requires it, the attorney-general may, with the approval of the governor, and when directed by the governor, shall, inquire into matters concerning the public peace, public safety and public justice. For such purpose he may, in his discretion, and without civil service examination, appoint and employ, and at pleasure remove, such deputies, officers and other persons as he deems necessary, determine their duties and, with the approval of the governor, fix their compensation... The attorney-general, his deputy, or other officer, designated by him, is empowered to subpoena witnesses, compel their attendance, examine them under oath before himself or a magistrate and require that any books, records, documents or papers relevant or material to the inquiry be turned over to him for inspection, examination or audit, pursuant to the civil practice law and rules...

AMERICAN BAR ASSOCIATION'S MODEL RULES OF PROFESSIONAL CONDUCT

RULE 3.1 Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law...

RULE 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RULE 5.1 **Responsibilities of a Partner or Supervisory Lawyer**

(a) A partner in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

NEW YORK STATE BAR ASSOCIATION'S CODE OF PROFESSIONAL RESPONSIBILITY

All references in brackets are to the Disciplinary Rules of the Code of Professional Responsibility, promulgated as joint rules of the Appellate Divisions of the Supreme Court and set forth in Part 1200 of Title 22 of New York Codes, Rules and Regulations [NYCRR]

CANON 1

A LAWYER SHOULD ASSIST IN MAINTAINING THE INTEGRITY AND COMPETENCE OF THE LEGAL PROFESSION

DR 1-102 [22 NYCRR §1200.3]:
Misconduct

A lawyer or law firm shall not:

1. Violate a Disciplinary Rule.

2. Circumvent a Disciplinary Rule through actions of another.

3. Engage in conduct involving moral turpitude.

4. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

5. Engage in conduct that is prejudicial to the administration of justice.

...

8. Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

DR 1-103 [22 NYCRR §1200.4]:
Disclosure of Information to Authorities

A. A lawyer possessing knowledge,

(1) not protected as a confidence or secret, ...

of a violation of DR 1-102 [§1200.3] that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness in other respects as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B. A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

DR 1-104 [22 NYCRR §1200.5]:
Responsibilities of a Supervisory Lawyer

A. A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to the disciplinary rules.

B. A lawyer with management responsibilities in the law firm or direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the disciplinary rules.

C. A law firm shall adequately supervise, as appropriate, the work of partners, associates, and nonlawyers who work at the firm. The degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.

D. A lawyer shall be responsible for a violation of the disciplinary rules by another lawyer... if:

1. The lawyer orders, or directs the specific conduct, or, with knowledge of the specific conduct, ratifies it; or

2. The lawyer is a partner in the law firm in which the other lawyer practices..., or has supervisory authority over the other lawyer..., and knows of such conduct, or in the exercise of reasonable management or supervisory authority or should have known of the conduct so that reasonable remedial action could be or should have been taken at a time when its consequences could be or could have been avoided or mitigated.

CANON 7

A LAWYER SHOULD REPRESENT A CLIENT ZEALOUSLY WITHIN THE BOUNDS OF THE LAW

EC 7-14 A government lawyer who has discretionary power relative to litigation should refrain from...continuing litigation that is obviously unfair. A govenment lawyer not having such discretionary power who believes there is lack of merit in a controversy submitted to the lawyer should so advise his or her superiors and recommend the avoidance of unfair litigation. A government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record, and should not use his or her position or the economic power of the government to harass parties or to bring about unjust settlement or results...

DR 7-102 [22 NYCRR §1200.33]:
Representing a Client Within the Bounds of the Law

A. In the representation of a client, a lawyer shall not:

1. File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

2. Knowingly advance a claim or defense that is unwarranted under existing law, except that a lawyer may advance such a claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

3. Conceal or knowingly fair to disclose that which the lawyer is required by law to reveal.

4. Knowingly use perjured testimony or false evidence.

5. Knowingly make a false statement of law or fact.

...

7. Counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent.

8. Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

B. A lawyer who receives information clearly establishing that:

1. A client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a confidence or secret.

2. A person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

WAIVER

SUPREME COURT OF THE UNITED STATES

Supreme Court case No. 98-106

DORIS L. SASSOWER v. JUSTICE MANGANO, et al.
(Petitioner) (Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

x Please enter my appearance as Counsel of Record for all respondents.

There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

_____

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain if your name has changed since your admission):

Signature s/
Date: August 4, 1998
(Type or print) Name Thomas D. Hughes
x Mr. Ms. Mrs. Miss

Firm NYS Office of the Attorney General
Address 120 Broadway
City & State New York, New York Zip 10271
Phone (212) 416-8014

...
CC: Doris L. Sassower

LETTER FROM THE OFFICE OF THE U.S. SOLICITOR GENERAL, DATED AUGUST 10, 1998

August 10, 1998

Ms. Elena Ruth Sassower
Paralegal Assistant
283 Soundview Avenue
White Plains, New York 10606-3821

Dear Ms. Sassower:

This is in response to your letter to me of July 20, 1998, concerning your petition for certiorari in Sassower v. Mangano, et al., S. Ct. No. 98-106.

Unless invited to do so by the Court, it is the general policy of this Office not to file amicus briefs addressing whether the Court should grant certiorari in cases in which the government is not a party. The Court understands the policy, and invites the Solicitor General to state the views of the United States when the Court believes that such a statement would be helpful to it.

Should the Court invite a statement of our views in this case prior to acting on your petition, we will carefully consider the material you have sent in formulating those views.

Sincerely,
s/
Barbara D. Underwood
for
SETH P. WAXMAN
SOLICITOR GENERAL

cc. F. Elliot Siemon

PETITIONER'S LETTER, BY HER PARALEGAL ASSISTANT, ELENA RUTH SASSOWER, TO U.S. SOLICITOR GENERAL SETH WAXMAN, DATED JULY 20, 1998

BY EXPRESS MAIL: EMO25604705US

July 20, 1998

Seth Waxman, Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

RE: Request for *Amicus Curiae* Support, *Sassower v. Mangano, et al.*, U.S. Supreme Court Docket #98-106

Dear Solicitor General Waxman:

This letter follows up our brief conversation together at the U.S. Supreme Court on June 1st, following your address to the Supreme Court Historical Society, of which I am a member. In that conversation, you informed me of the twin procedures for obtaining the Solicitor General's *amicus* participation at the certiorari stage. Accordingly, enclosed is a copy of the petition for a writ of certiorari in the case of *Doris L. Sassower v. Hon. Guy Mangano, et al.*, docketed on July 20, 1998 under #98-106.

By this letter, *pro se* petitioner Doris L. Sassower respectfully requests your *amicus* support in obtaining certiorari for her eminently certworthy petition. Copies of this letter are also being sent to the Justices of the Supreme Court, with a request that they solicit your views on the petition, in the event you do not affirmatively respond.

The reasons warranting your *amicus* support are the same as warrant Supreme Court review. These are summarized by the petition under "*Reasons for Granting the Writ*" (pp. 21-30). The "*Statement of the*

Case" (pp. 2-20) details what is at issue: criminally corrupt conduct by federal judges, who obliterated *all* cognizable adjudicatory standards and rendered fraudulent decisions to "throw" a politically-explosive case in which high-ranking state defendants -- New York State judges and the New York State Attorney General -- were sued for corruption and civil rights violations under 42 U.S.C. §1983. Completely eviscerated was the judicial process by a district judge of the Southern District of New York, the appellate process by judges of the Second Circuit, *and* the federal judicial disciplinary process by the Second Circuit's Chief Judge and its Judicial Council. This was accomplished by the Second Circuit's subversion of the very statutes intended by Congress to **[p. 2]** safeguard the integrity of the federal judiciary -- 28 U.S.C. §§144 and 455, the statutes governing federal judicial disqualification, and 28 U.S.C §372(c), the statute governing federal judicial discipline. Consequently, this case not only involves issues of governmental integrity, necessarily concerning and affecting every American, but mandates the Supreme Court's power of supervision under its Rule 10.1. This is delineated at Point I of the petition (pp. 24-25) and reflected by the first "*Question Presented*". Point I and the first Question also highlight that even were the Court not to grant the petition, it would still have a duty under ethical codes to make disciplinary and criminal referrals of the subject federal judges, as well as of respondents' counsel, the New York State Attorney General, himself a co-respondent, all of whom engaged in fraud, collusion, and conspiracy (pp. 25-26). As noted, referrals of the federal judges involved would have to be to the Public Integrity Section of the Justice Department and to the House Judiciary Committee -- since the record shows that the lower federal judiciary is totally unwilling to "police itself".

As you know, you, too, are bound by ethical codes[1] and also have a duty to make disciplinary and criminal referrals -- separate and apart from your duty to support Supreme Court review of significant petitions, as this petition unquestionably is.

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[1] *See* ABA Model Rules of Professional Conduct, Rule 8.[3] "Reporting Professional Misconduct".

As set forth in the petition (at p. 24), the record in *Sassower v. Mangano* was long ago provided to the Administrative Office of the United States Courts for referral to the Judicial Conference, as well as to the House Judiciary Committee, so that they could take remedial steps to protect the public from the wholesale corruption of the judicial/appellate/disciplinary processes, which the record incontrovertibly documents. The petition describes the non-response of the Administrative Office and Judicial Conference, with substantiating materials included in the Appendix [A-308-310]. The House Judiciary's non-response is not part of the petition, but is highly relevant to the responsibility of your office -- representing the Executive Branch -- to act on behalf of the otherwise unprotected public. The facts concerning that non-response are chronicled by the written statement submitted by the Center for Judicial Accountability, Inc. (CJA)[2] for inclusion in the record of the House Judiciary Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary". A copy is enclosed, as is CJA's substantiating evidentiary compendium.

[p. 3] So that the Supreme Court's consideration of the *Sassower v. Mangano* petition may be fully informed not only as to the non-response of the Judicial and Legislative Branches, but as to the Executive Branch's response (assuming there is one) to petitioner's request for *amicus* support, as well as for criminal investigation and prosecution of the federal judges, *et al.*, a copy of this letter, the cert petition, and CJA's aforesaid testimony is being sent to the Justice Department's Public Integrity Section. Such transmittal follows up my telephone conversation on Friday, July 17th, with the office of Lee Radek, Chief of the Public Integrity Section (202-514-1412). To enable Mr. Radek to verify -- *readily* -- the outright fraud committed

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[2] In the course of our June 1st conversation together, I provided you with a copy of CJA's informational brochure, as well as a copy of my published article "*Without Merit: The Empty Promise of Judicial Discipline*", The Long Term View (Massachusetts School of Law), Vol. 4, No. 1 (summer 1997). The published article was part of the record before the Second Circuit in *Sassower v. Mangano* and appears at A-207-220 of the cert petition. An additional copy of CJA's informational brochure is enclosed for your convenience.

by the judges of the Second Circuit, the dishonesty of whose decisions is particularized by documents reproduced in the petition's appendix [A-177-186; A-221-241; A-282-292], a copy of the full record in *Sassower v. Mangano* is being transmitted to the Public Integrity Section -- identical to that previously provided to the Administrative Office and the House Judiciary Committee[3]. Needless to say, investigation and prosecution by the Public Integrity Section is even more compelled, if -- as suggested by petitioner's Second Circuit Petition for Rehearing with Suggestion for Rehearing *in banc* [at A-204]-- "there is a regular practice and course of conduct in [the Second] Circuit to 'throw' cases involving state court judges sued for corruption, with whom [the] Circuit, no doubt, has long-standing professional and personal ties".

According to the article, "*Riding the Coattails of the Solicitor General*" (Legal Times, March 29, 1993), by John G. Roberts, Jr., principal deputy solicitor from 1989 to 1993, the Solicitor General "give[s] great weight to the considered views of the affected division or agency" at the Justice Department -- which in this case is the Public Integrity Section. Consequently, our transmittal to the Public Integrity Section should additionally serve to secure its endorsement of your *amicus* support for Supreme Court review of the *Sassower v. Mangano* petition.

Based on the transmitted record in *Sassower v. Mangano*, if the Public Integrity Section does not endorse your *amicus* support of the petition and does not, on its own, commence a criminal investigation -- without necessity of Supreme Court referral, as identified by the cert petition (at p. 25) -- petitioner requests that it identify the branch of government responsible for investigating the corruption of the federal judicial/appellate/disciplinary processes, established by the transmitted

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[3] As identified by the cert petition (p. 24, fn. 10), a copy of the record in *Sassower v. Mangano* was also provided to the Commission on Structural Alternatives for the Federal Courts of Appeals. A copy of CJA's April 24, 1998 testimony before the Commission is included at A-42 of the compendium accompanying its written statement to the House Judiciary Committee. The testimony is also accessible from CJA's website: *www.judgewatch.org* .

record, and that it make the appropriate referral. Such identification and referral would be in keeping with various representations and recommendations in the 1993 Report of the National Commission [p. 4] on Judicial Discipline and Removal[4] -- a report to which all three branches contributed, including the Justice Department and Public Integrity Section on behalf of the Executive Branch.

Thank you for your prompt attention and hoped-for favorable consideration.

Yours for a quality judiciary,

s/

ELENA RUTH SASSOWER,
Paralegal Assistant

Letter Read and Approved by:

s/

DORIS L. SASSOWER
Petitioner *Pro Se, Sassower v. Mangano, et al.*

Enclosures:

(1) *Sassower v. Mangano* cert petition, #98-106
(2) CJA's written statement and substantiating compendium for inclusion in the record of the House Judiciary's Committee's 6/11/98 "oversight" hearing
(3) CJA's informational brochure, with enclosed public interest ads, "*Where Do You Go When Judges Break the Law?*" (NYT, Op-Ed page, 10/26/94) and "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (NYLJ, pp. 3-4, 8/27/97)

cc: The Justices of the U.S. Supreme Court
Lee Radek, Chief, Public Integrity Section,
U.S. Department of Justice

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[4] *See, inter alia*, National Commission's Report, pp. 66-67, 70-72, 79-81.

House Judiciary Committee:
Subcommittee on Courts and Intellectual Property
Att: Mitch Glazier, Chief Counsel
Att: Robert Raben, Minority Counsel
Judicial Conference of the United States
c/o Administrative Office of the United States Courts
Att: William Burchill, Jr., General Counsel
Jeffrey Barr, Assistant General Counsel
Commission on Structural Alternatives for the Federal Courts of Appeals
Att: Byron White, Chairman
New York State Attorney General Dennis Vacco,
Counsel for *Mangano, et al.* respondents

Enclosure to PETITIONER'S JULY 20, 1998 LETTER TO U.S. SOLICITOR GENERAL SETH WAXMAN

Statement of the Center for Judicial Accountability, Inc. (CJA) for inclusion in the Record of the House Judiciary Committee's June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary"

This statement is presented for inclusion in the record of the June 11th "oversight" hearing so that members of Congress and the interested public are not otherwise misled into believing that the House Judiciary Committee or its Court Subcommittee is meaningfully discharging its duty to oversee the federal judiciary. It is not.

The *only* witnesses permitted to testify at the Subcommittee's "oversight" hearing were those representing the bodies overseen -- the Judicial Conference, the Administrative Office, and the Federal Judicial Center. Deliberately excluded, without reasons, was the Center for Judicial Accountability, Inc. (CJA), a national, non-partisan, non-profit citizens' organization, which has been monitoring the federal judiciary for many years. Our track record of advocacy before the Subcommittee has included two fully-documented Memoranda exposing a pattern of official misconduct and corruption within and by the federal judiciary, covered-up by the Judicial Conference and Administrative Office.

Copies of CJA's two Memoranda are annexed to this statement, as is our correspondence pertaining to the June 11th "oversight" hearing. Without these appended documents[1], incorporated herein and made part of this statement, Congress and the interested public cannot begin to fathom the travesty of the Subcommittee's so-called "oversight" and its reprehensible response to CJA's unparalleled contribution **[p. 2]** to advancing *genuine*

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[1] For ease of reference, the pages of the appended documents included in this record are numbered sequentially, prefaced by R- (standing for "Record").

oversight. Nor can they be convinced -- except by seeing these documents themselves -- that such misconduct is deliberate and with the knowledge and complicity of those "at the top": the leadership of the Courts Subcommittee and the full Committee.

CJA's two Memoranda, dated March 10, 1998 [R-1] and March 23, 1998 [R-15], were addressed to House Judiciary Committee Chairman Hyde and the Committee members. They describe how the Judicial Conference, in its lobbying to block legislation being considered by the Committee, made false and deceitful claims to the Committee as to the adequacy and efficacy of 28 U.S.C. §372(c) -- the statute governing judicial discipline -- and 28 U.S.C. §§144 and 455 -- the statutes governing judicial disqualification. The Memoranda highlight that these essential statutes, intended by Congress to protect the public from biased, abusive, and dishonest judges, have been gutted by the federal judiciary. The federal judiciary has successfully concealed its subversion of §372(c) by making §372(c) judicial misconduct complaints confidential and inaccessible -- even to Congress. It also sabotaged what was supposed to be -- but was not -- the first independent review of §372(c) by the National Commission on Judicial Discipline and Removal. This is particularized by CJA's published article [R-10-11], "*Without Merit: The Empty Promise of Judicial Discipline*"[2], annexed to the March 10th Memorandum, which exposed the National Commission's 1993 Report as "methodologically flawed and dishonest" [R-3]. Even still, the federal judiciary has failed to follow through with key recommendations the Commission made for enhancing the functioning of §372(c). This includes the Circuits' failure to provide reasoned, non-conclusory explanations in their orders dismissing §372(c) complaints and to build a body of interpretive caselaw, as well as the Judicial Conference's failure to modify and expand its committee structure to monitor and develop policy on judicial discipline and ethics issues [R-19]. Noting that we had been "unable to ascertain how much money,

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[2] The Long Term View (Massachusetts School of Law), Vol. 4, No. 1, summer 1997.

if any, of the federal judiciary's $3,000,000,000 budget is earmarked for [its] oversight of §372(c)" [R-19], our March 23rd Memorandum highlighted that there is no one employed by the Administrative Office to handle §372(c) on a full-time basis, but only a single person, who gives it rock-bottom priority in comparison to his other duties [R-20]. As to this person, our Memoranda [R-20-23] provided the Committee with evidentiary proof of his wilful complicity in the federal judiciary's subversion of §372(c).

[p. 3] Congress promised "vigorous oversight" when it passed §372(c), reposing federal judicial discipline in the federal judiciary based on the federal judiciary's claims that it could and would "police itself". It was to facilitate that oversight that Congress required the Administrative Office to publish yearly statistics on §372(c) in its annual reports [28 U.S.C. §604(2)]. And what are these statistics? According to the Administrative Office's 1997 Annual Report, the federal judiciary disposed of 482 complaints over a twelve-month period, *without* a single federal judge having been disciplined, either publicly or privately, and *without* a single investigative committee having been appointed. Likewise, in the 1996 Annual Report, out of 588 complaints, not a single federal judge was either publicly or privately disciplined by the federal judiciary, which also appointed *no* investigative committees. This **100%** dismissal rate should have elicited skepticism, even without CJA's Memoranda. With CJA's Memoranda, the Subcommittee should have been roused to action. For the first time, the Subcommittee had an analysis of how the federal judiciary has been dumping legitimate complaints and "hard evidence" to back it up: copies of actual §372(c) complaints and of the federal judiciary's orders dismissing them. From these the Subcommittee could verify for itself that the federal judiciary -- with the knowledge of the Administrative Office and Judicial Conference -- has been tossing out substantive complaints by dismissal orders which deliberately misrepresent the complaints' factual allegations and deliberately misrepresent and conceal the proper standard for review.

Since the Subcommittee does *not* itself investigate judicial misconduct complaints it receives from individual complainants and, at most, directs complainants to file §372(c) complaints with the

federal judiciary -- a fact highlighted by our published article [R-11, R-13] -- the significance of §372(c) being sham is that individual litigants and the affected public have nowhere to turn for protection against misbehaving judges.

Consequently, if the Subcommittee had passing respect for its oversight obligations -- not to mention the self-respect to object to being lied to -- it had to call upon the Judicial Conference to respond to CJA's evidentiarily-substantiated Memoranda. For its part, if the Judicial Conference believed that the Subcommittee takes oversight seriously, it would have come forth, on its own, to deny, dispute, or rebut them -- if it could. Yet the Judicial Conference provided *no* response and the Subcommittee did not request one -- not even *after* Professor Stephen Burbank, a member of the defunct National Commission, *failed* to defend against our Memoranda, including our critique of the chapter on §372(c) of the Commission's Report, which he **[p. 4]** authored. Professor Burbank's shocking response was highlighted at the outset of our March 23rd Memorandum [R-15], which annexed the exchange of correspondence [R-26-30].

CJA's Memoranda, substantiated by a boxload of meticulously organized evidentiary proof, were completely ignored by the House Judiciary Committee, whose counsel failed to return any of our follow-up phone messages. This includes our phone messages requesting a meeting with counsel to discuss the profound and far-reaching issues presented by the Memoranda and to update them on subsequent developments. Such request should have been welcomed, coming as it did in the weeks preceding the June 11th "oversight" hearing. Indeed, our May 22nd letter [R-40], formalizing our meeting request, *also* requested to be permitted to testify [R-41][3].

Based on our Memoranda, it should not have been necessary

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[3] Enclosed with our May 22nd letter was a copy of our April 24, 1998 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals [R-42-60]. As reflected by that testimony [R-47], we expressly drew the Commission's attention to our March 10th and 23rd Memoranda, copies of which we provided it, together with the substantiating evidentiary proof.

for CJA to request to testify -- we should have been invited. Moreover, if the Subcommittee was not going to grant CJA's request to testify, it was even more important for its counsel to meet with us or, at least, to speak with us. How else was counsel going to be able to properly brief Subcommittee members on the serious issues presented by our Memoranda? -- all of which were germane to questioning of the federal judiciary's witnesses at the "oversight" hearing.

To ensure that such questioning was not frustrated by federal judiciary witnesses claiming "surprise" and unfamiliarity with the Memoranda, CJA gave notice to the Administrative Office, by letter dated May 29th [R-61], that they should come to the hearing prepared to testify about them and respond to members' questioning. Lest the Administrative Office not transmit such notice to the Judicial Conference, we took the extra precaution of delivering a duplicate letter, in hand, to the Clerk of the U.S. Supreme Court, who accepted service for Chief Justice Rehnquist as head of the Judicial Conference. We also gave him duplicates of CJA's two Memoranda. Needless to say, we provided a copy of our May 29th letter to the Subcommittee.

[p. 5] It is against this background -- and after leaving numerous phone messages for Subcommittee counsel about our meeting request and about our request to testify, all unreturned -- that, on June 3rd, a Subcommittee staff assistant told us, in answer to our phone inquiry, that CJA would not be permitted to testify at the "oversight" hearing. According to her, this was because Subcommittee Chairman Howard Coble had "closed" the witness list. The staff assistant gave us no information as to why or when the list was "closed". As to who was on the witness list, we were told that this information was "confidential". As in the past, no Subcommittee counsel was available to speak with us. Our messages for them were unreturned.

We turned to Chairman Coble. Our June 5th letter to him [R-66], reiterating our request to testify, followed phone conversations with his chief of staff and legislative assistant. Our letter, which annexed the pertinent documents -- CJA's two Memoranda and May

22nd and May 29th letters -- chronicled Subcommittee counsel's unprofessional conduct. This included facts showing that they had sabotaged the very Subcommittee legislation to which our Memoranda were addressed by withholding the Memoranda from the Committee and Congress [R-66-68]. Additionally, correspondence annexed to the letter[4] [R-90-111] demonstrated that the unprofessional conduct of Subcommittee counsel had a history going back many years as CJA discovered -- then tried to rectify -- that even after the National Commission's 1993 Report recommended (at pp. 37, 148) that "the House ensure that its Committee on the Judiciary has the resources to deal with judicial discipline matters", the Subcommittee had taken *no* steps to obtain necessary resources. Instead, the Subcommittee was continuing to ignore the judicial misconduct complaints it received, based on its alleged lack of resources. Simultaneously, it was withholding from Congress -- and the public -- statistics as to the number of complaints being filed with it, information the National Commission's Report identified as included in the House Judiciary Committee's "Summary of Activities" for each Congress[5] -- and denying the public access to those complaints **[p. 6]** , notwithstanding the National Commission's Report stated they were "available upon request".

Our June 5th letter thus presented a picture of profound dysfunction by the Subcommittee in its own handling of judicial

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[4] The correspondence annexed to our June 5th letter was from February 2, 1996 through January 20, 1998 [R-90-111], a period in which the Republican majority had taken over the Subcommittee from the Democrats. Such materials refer to and describe our prior correspondence with the Democrats, whose unprofessional conduct likewise evinced their repudiation of "oversight" over the federal judiciary. In the interest of completeness, that earlier correspondence is included at R-74-89]. *See* also R-35 for our first letter to the Subcommittee, dated June 9, 1993.

[5] CJA's July 10, 1995 letter to Subcommittee counsel pointed out [R-96] that the Judiciary Committee's "Summary of Activities" for the 103rd Congress failed to include statistical information on "the number and nature of judicial discipline complaints it receives". No corrective action was taken -- as reflected by the fact that the Committee's "Summary of Activities" for the 104th Congress also OMITS such information.

misconduct complaints -- beyond its disinterest in overseeing the federal judiciary's handling of judicial misconduct complaints under §372(c). This should have been a jolting wake-up call for Chairman Coble, as well as for the high-ranking House Judiciary Committee members to whom we sent the letter: full Committee Chairman Hyde and Congressman John Conyers, ranking member of the full Committee, as well as to Congressman Barney Frank, ranking member of the Courts Subcommittee. Indeed, as to the ranking members, our June 5th letter stated our belief that surely "the Democratic minority has some 'say' in the witness list for the June 11th hearing" [R-72].

We received no response from anyone. Consequently, on June 10th, the eve of the "oversight" hearing, we sent a fax to each of the indicated recipients of our June 5th letter -- with a copy to Chairman Coble. In pertinent part, it read:

> "The Courts Subcommittee staff has provided us with the witness list for tomorrow's "oversight" hearing. Only representatives of the bodies being "overseen" -- the Judicial Conference, Administrative Office, and Federal Judiciary -- will be testifying.
>
> As you know, CJA's request to testify at that hearing, based on our March 10th and March 23rd Memoranda to the House Judiciary Committee, was the subject of our faxed June 5th letter addressed to Courts Subcommittee Chairman Howard Coble, with copies faxed to each of you as indicated recipients.
>
> ... no response has been forthcoming as of this date and time: June 10th, 4:30 p.m.
>
> Needless to say, the Subcommittee's refusal to include CJA as a witness **[p. 7]** at its "oversight" hearing -- and your failure, as indicated recipients, to take discernible corrective steps -- does not eliminate the Subcommittee's obligation to make tomorrow's "oversight" hearing more than the ceremonial exercise

than its past "oversight" hearings have been. Based on the documentary proof CJA provided the Subcommittee as to the federal judiciary's deceitful claims to Congress as to the adequacy and efficacy of 28 U.S.C. §§372(c), 144, and 455 -- statutes essential to protecting the public from judicial bias and corruption -- the public has a right to expect that the Subcommittee will closely question the federal judiciary's witnesses at tomorrow's hearing. Indeed, as pointed out in our May 29th letter, Congress promised "vigorous oversight" over §372(c) when, in 1980, it reposed federal judicial discipline in the federal judicial branch based on the judiciary's claims that it could police itself.

For the Subcommittee to fail to explore the serious issues presented by CJA's March 10th and March 23rd Memoranda would make the Subcommittee even more of a laughing-stock in the federal judiciary's eyes than it already is. Indeed, the contempt with which the federal judiciary holds Congress is evident not only from its false, fraudulent and deceitful representations to Congress, as highlighted by our Memoranda, but by its failure to recognize its duty to respond to the serious charges as to its misconduct, therein particularized

Finally, since the Subcommittee seems to operate without any awareness that the Judicial Conference and Administrative Office constitute a taxpayer-supported special interest group, lobbying for the federal judiciary, we strongly recommend -- as required reading -- the excellent book of Professor Christopher E. Smith entitled Judicial Self-Interest: Federal Judges and Court Administration (Praeger Publishers, 1995, 145 pp.)."

Again, no response.

Although the transcript of the Subcommittee's June 11th "oversight" hearing has not been posted on the House Judiciary's website, we have been advised that none of the Subcommittee members at the hearing questioned the federal judiciary's witnesses about CJA's two Memoranda or the issues raised therein. These members include **[p. 8]** Chairman Coble and Congressman Frank, who, nonetheless apparently engaged the witnesses in questioning on media-publicized judicial disqualification issues: judges having stock in a litigant or attending seminars funded by a foundation that funds litigation. Such questioning was, of course, a "stone's throw" away from the larger -- and more profound -- issues presents by our Memoranda: that the disqualification and disciplinary statutes are "empty shells" and that the Judicial Conference and Administrative Office cover up for federal judges, whose "actual" bias is manifested by their obliteration of the judicial/appellate/disciplinary processes.

We have read the lengthy statements of Judge William Terrell Hodges, Chairman of the Executive Committee of the Judicial Conference, and of Leonidas Ralph Mechem, Director of the Administrative Office. Neither contain any reference to CJA's Memoranda or the critical issues they present. These omissions can only be seen as deliberate -- in view of CJA's hand-delivered May 29th letter [R-61]. The fact that both Judge Hodges and Mr. Mechem, who are at the heights of the federal judiciary's costly taxpayer-supported superstructure, should come before the Subcommittee and not address those issues, yet include in their statements requests for increased salaries and employment benefits for federal judges[6] and administrative personnel, demonstrates their contempt for the public's rights and the Subcommittee's "oversight".

Despite the explicit reminder in our May 29th letter of Congress' promised "vigorous oversight" when it passed §372(c) [R-62], their written statements conspicuously make no claim as to the efficacy of the disciplinary mechanism set up under that statute, which

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[6] For a reality-check as to the incessant whining of federal judges that they are "underpaid", etc., Chapter 3 of Professor Smith's book, *supra*, is a must-read.

they nowhere mention. Nor is there any mention of "judicial accountability" or the National Commission's 1993 Report. For other purposes, Judge Hodges' statement cites (p. 19) the Judicial Conference's 1995 Long-Range Plan. CJA is very familiar with that Plan, having testified in 1994 before the Conference's Long-Range Planning Committee, which produced it [R-87]. As we pointed out then -- and as appears in the Plan (pp. 7, 9) -- the federal judiciary purports that "accountability" is one of its "Core Values". On the issue of "accountability", its Plan (p. 88) relies on the National Commission's Report, endorsing what it calls the Commission's central recommendation "that impeachment should remain the sole method for removing life-tenured federal judges from office". As may be seen from CJA's March 23th Memorandum [R-24-25], we expressly called upon the Judicial [p. 9] Conference to make its views known to the House Judiciary Committee if it disagreed with what we called a "straightforward statement" that:

> **"Judges who, for ulterior purposes, render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in impeachable conduct."**

That Memorandum also called upon the Judicial Conference to rebut our contention -- if it disagreed -- that the fraudulent judicial decisions of the district and circuit judges in the two cases the Memorandum presented "should be among the first to be so-investigated". The Judicial Conference's no response -- as well as the no response of Professor Burbank and the American Bar Association, whose responses we expressly solicited -- leaves the way clear for the Subcommittee to act, free from claims that such investigation intrudes on "judicial independence".

Ironically, the single instance in Judge Hodges' statement where the word "accountability" appears is in his sentence reading: "Federal judges have protected unpopular movements and individuals, and punished corruption that seemed immune from accountability under local laws." (p. 29). That is not what happened in either of the two cases presented by CJA's March 23rd Memoranda, cases about

which CJA testified, in detail, before the Commission on Structural Alternatives for the Federal Courts of Appeals [R-46-60][7]. In each of those cases, federal judges annihilated anything resembling the "rule of law" to retaliate against individuals "unpopular" with the federal judiciary: judicial whistle-blowers. Moreover, the second case is one involving corruption by state officials, sued under 42 U.S.C. §1983. The defendants in that case include high-ranking New York State judges and the New York State Attorney General who escaped all accountability under local laws by virtue of their power and influence. As the record shows -- a record long ago transmitted to the Administrative Office for presentment to the Judicial Conference -- defendants' power and influence extends to the federal court, where federal judges, on the district and circuit levels, obliterated all cognizable legal standards, beginning with honesty, to protect them. That case is now before the U.S. Supreme Court on a Petition for a Writ **[p. 10]** of Certiorari -- copies of which we provided, on June 2nd, to the Administrative Office, to the Subcommittee, and to the Commission on Structural Alternatives for the Federal Courts of Appeals.

The two meticulously-documented cases presented by CJA's Memoranda explode just about every myth the federal judiciary likes to perpetuate about itself -- particularly those promoted in the National Commission's Report as ensuring judicial accountability. Unless and until the Judicial Conference addresses those Memoranda and cases, there should be no pretense that the federal judiciary's "self-policing" is anything but a hoax on the American people. And unless and until the Courts Subcommittee demands the Judicial Conference to do so, there should be no pretense about its promised "vigorous oversight" over the federal judiciary's implementation of §372(c).

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[7] CJA's testimony makes plain that a consequence of judicial misconduct is to clog the federal courts with otherwise unnecessary litigation, including appeals necessitated by that misconduct. The cost is borne by U.S. taxpayers -- a matter also clearly warranting Judiciary Committee oversight.

Meantime, this Subcommittee has impeachment investigations to attend to -- necessitated by the demonstrated worthlessness of the federal judicial disqualification and disciplinary statutes.

Enclosure to PETITIONER'S JULY 20, 1998 LETTER TO U.S. SOLICITOR GENERAL WAXMAN (R-42-53 of Compendium to CJA's Statement to House Judiciary Committee)

Statement of the Center for Judicial Accountability, Inc. (CJA) for presentment at the April 24, 1998 Public Hearing of the Commission on Structural Alternatives for the Federal Courts of Appeals

My name is Elena Ruth Sassower and I am the coordinator and co-founder of the Center for Judicial Accountability, Inc. -- known as CJA. CJA is a national, non-partisan, non-profit citizens' organization, with members in over 30 states. Our purpose is to safeguard the public interest in meaningful and effective processes of judicial selection and discipline so as to ensure the integrity of the judicial process. We do this by gathering and analyzing empirical evidence. Where the evidence shows dysfunction and corruption, we provide that evidence to those in leadership positions so that they can *independently* verify it and take remedial action to protect the public. It is to provide this Commission with such evidentiary proof that I am here today.

At the outset, an observation must be made about this Commission. It is unclear to us – and to everyone else we have asked at the Commission, the Administrative Office, and the House and Senate Judiciary Committees -- how the Commission came to be constituted as it has, consisting of five members *all* of whom have been appointed by the Chief Justice of the Supreme Court. The several bills introduced in the House of Representatives last year -- and the one ultimately passed -- called for a commission with members designated by appointing authorities from the three branches of government. The same is true of the bills that were introduced in the Senate. In each of these bills, the Chief Justice's designees were equal in number to those of the President and even combined they were outnumbered by those designated by Congress.

It has been explained to us that the Commission that emerged was some sort of last-minute compromise at the end of the 105th Congress between the House, which had passed its aforesaid commission bill, and the Senate, which was about to vote to split the Ninth Circuit. Frankly, we don't see the basis upon which a commission with a membership chosen solely by the Chief Justice, with no requirement of diversity[1], could be viewed as a compromise by anyone but the federal judiciary. Yet, the Administrative Office has told us that the federal judiciary was itself **[p. 2]** surprised by the creation of the Commission since the Judicial Conference had taken *no* position on the split of the Ninth Circuit[2], which had *not* been the subject of any Senate hearing since September 13, 1995, and had *not* requested any congressional studies on that issue or on structural reform.

The Commission members designated by the Chief Justice are four federal judges and the past-president of the American Bar Association, the keynote of whose presidency was the independence of the judiciary. As such, this Commission is going to have an even tougher job of proving its credibility to an already cynical general public -- and to Congress. It can do this only by providing those who are not part of the federal judicial and legal establishment represented by its membership with a meaningful opportunity to be heard and by examining the evidentiary proof presented in opposition to standard establishment claims.

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[1] By contrast, when Congress passed the 1988 bill which created the Federal Courts Study Committee, all of whose 15 members were to be designated by the Chief Justice, it required him to make his selection "in a manner as to be representative of the various interests, needs, and concerns which may be affected by the jurisdiction of the Federal courts". Public Law No. 100-702, 102 Stat. 4642, reprinted as Appendix A of the April 2, 1990 Report of the Federal Courts Study Committee.

[2] In a telephone conversation with John Hehman, Chief of the Appellate Court and Circuit Administration Division of the Administrative Office, we inquired whether the judges of the Ninth Circuit were requesting that the Ninth Circuit be split -- or whether the clamor was from judges outside the Circuit and from politicians. He confirmed the latter to be the case.

As highlighted by the comprehensive statement of Professor William Richman at the Commission's April 3rd hearing, the simplistic arguments for opposing an increase in the size of the federal judiciary, advanced by what he calls the "Judicial Establishment", are either *not* empirically-supported or are *contradicted* by the empirical evidence. This includes the arguments that there will be a decrease in the quality of the federal judiciary because, with an influx of federal judicial nominees, there will be less scrutiny of their qualifications. This very argument was advanced by former Eleventh Circuit Chief Judge Gerald Tjoflat at the Commission's March 23rd hearing, in a statement quoting from the much-cited 1993 article of then Second Circuit Chief Judge Jon Newman[3], a leading proponent of a small judiciary. As to this argument, Professor Richman's masterful law review article, "*Elitism, Expediency, and the New Certiorari: Requiem for the Learned Hand Tradition*" (Cornell Law Review, Vol. 81: 273-342 (1996)[4]) -- from which his hearing statement was adapted -- also cites Judge Newman's article. Yet, Professor Richman's April 3rd statement (at p. 2) goes beyond his own law review article (at p. 302) to assert: "Judges are confirmed in groups and their hearings are pro forma." That, however, is just the tip of the iceberg.

The travesty of the Senate's confirmation of federal judicial nominees has been the subject of a variety of studies, in addition to published narrative accounts, going back many years before Judge Newman's 1993 article, when the federal judiciary was yet smaller. These include the 1986 Common Cause Study entitled, *Assembly-Line Approval* -- which made a list of salutary recommendations, all or most of which appear to be unimplemented today -- as well as a chapter entitled "*Judicial Nominations: Whither 'Advice and Consent'?*" in the 1975 book on the House and [p. 3] Senate Judiciary Committees by Ralph Nader's Congress Project. However, the lack of scrutiny of the qualifications of judicial nominees goes beyond the

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[3] "1,000 Judges -- The Limit for an Effective Federal Judiciary", 76 Judicature 187 (1993).

[4] Co-authored by Professor William Reynolds.

public spectacle of *pro forma*, assembly-line confirmation hearings[5]. It embraces the closed-door supposed pre-nomination screening.

Back in 1992, CJA pierced the veil of secrecy surrounding the pre-nomination judicial screening process. Comparing the blank questionnaire which the Senate Judiciary Committee requires each federal judicial nominees to complete with the blank questionnaires used by the American Bar Association and the Association of the Bar of the City of New York for their pre-nomination screening, we discovered that they were similar and even identical in their most pertinent parts. Thus, in obtaining the publicly-available responses to the Senate Judiciary Committee questionnaire for a particular case study nominee -- one nominated to the Southern District of New York -- we could infer what his confidential responses had been to those bar associations' similar if not identical questions. And once we investigated those publicly-available responses, we were able to prove that no adequate investigation had been done by these organizations -- since they would have otherwise readily unearthed his innumerable misrepresentations of his qualifications and proof (from the easily-accessible court files of the litigated cases he had identified as his "most significant") that he been an incompetent and unethical practitioner when he practiced law -- which was not for nearly a decade. Indeed, we showed that our case study nominee was "thoroughly unfit for judicial office" and that his true credentials were his political connections. This we documented in a 50-page critique -- the product of six months of investigative research -- which we submitted to the leaders of the U.S. Senate, with a moratorium request to halt all judicial confirmations pending an official investigation of the serious failure of the pre-nomination screening process, established by our critique. In so doing, we beseeched the bar associations, to whom we gave copies of the critique, to give their support and to correct their egregiously faulty procedures which, in the case of the City Bar, included deliberately *screening-out* adverse information so as to confer upon the nominee an "approved" rating.

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[5] *See also* Judicial Roulette: Report of the Twentieth Century Fund Task Force on Judicial Selection, 1988.

In 1993, we presented a copy of our groundbreaking critique to the National Commission on Judicial Discipline and Removal and, in 1994, presented a copy to the Judicial Conference's Long-Range Planning Committee, together with three compendia of our correspondence with those in leadership positions in the Senate, at the ABA, and at the City Bar, demonstrating their utter failure to take any corrective steps. Both the National Commission and the Long-Range Committee ignored our critique, issuing final reports which -- like their draft reports -- recognized the critical importance of a careful appointments process, *without* any affirmative representation about whether such process exists in fact[6].

[p. 4] So that this Commission's conclusions may be empirically-based as to how completely dysfunctional the process of federal judicial appointments is -- and the need for systemic reform, *irrespective* of how many additional judgeships are created -- we are providing you with the *identical* materials we presented to the National Commission on Judicial Discipline and Removal and to the Long-Range Planning Committee, as well as further primary source materials, collected in a June 28, 1996 letter to Senate Judiciary Committee Chairman Orrin Hatch in opposition to the confirmation of another politically-connected nominee. These additional materials chronicle, perhaps even more powerfully, the utter dysfunction of the ABA's pre-nomination screening -- in this case, its wilful *screening-out* of information adverse to the candidate it was rating -- as well as the hoax of post-nomination Senate screening[7]. This letter reiterated

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[6] Without citing *any* evidentiary support, the 1990 report of the Federal Courts Study Committee asserted that federal judges have been "carefully selected through the process of presidential nomination and senatorial confirmation" (at p. 4). Included in its arguments against more than an incremental expansion of the size of the federal judiciary was its claim that "The process of presidential nomination and senatorial confirmation would become pro forma because of the numerosity of the appointees..." (at p. 7).

[7] The despicable behavior of the ABA, Justice Department, and Senate Judiciary Committee, chronicled by that letter, provides a "reality check" to the Miller Center Commission Report, "*Improving the Process of Appointing Federal Judges*", issued in that same period.

our prior call for a moratorium and official investigation and was provided to those in leadership in the Senate, at the Justice Department, in the ABA -- with no response, except for Senate confirmation of the nominee who was the beneficiary of the wilful non-scrutiny and cover-up our letter documented.

Obviously, a dysfunctional judicial selections process will increase the likelihood of judges committing substantial "error" or engaging in misconduct. The result is injustice for those litigants who cannot afford appeals -- which is most litigants -- and otherwise needless appeals for the litigants who can. These appellants are not only burdened with appeal costs, but by injury which may be irreparable even if they obtain appellate reversal. But do they obtain reversals of meritorious appeals, where the facts and law are decisively in their favor? Professor Richman does not answer that question either in his April 3rd statement or in his law review article, other than to refer to the diminished quality of appellate decisions resulting from short-cut procedures being used to deal with increased caseload. This is different from saying that the result is incorrect. However, on a statistical level alone, the precipitous drop in reversal rates to half of what they were in 1960[8] should raise alarm.

In developing a methodology, this Commission MUST go behind the statistics[9] and [p. 5] look at actual appellate files. We suggest that you begin with cases where petitions for rehearing and/or rehearing *in banc* have been filed, as well as where §372(c) complaints have been filed against appellate judges. This will enable the

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[8] "*Elitism, Expediency, and the New Certiorari: Requiem for the Learned Hand Tradition*, Cornell Law Review, *supra*, p. 295.

[9] In testifying at the September 13, 1995 Senate hearing on splitting the Ninth Circuit, Professor Arthur Hellman, who has conducted the critical empirical study on the Ninth Circuit's size and intra-circuit conflict, made a pertinent comment about the limitations of statistics: "...I have been struggling with these judicial caseload management statistics ever since my work at the Hruska Commission and I can tell you that it is extraordinarily difficult to identify the causes of delay or really any other appellate problems through the use of these statistics." (at p. 106).

Commission to better evaluate whether, as the federal judiciary has claimed, the appeals given the short-cut treatment, *inter alia*, *no* oral argument, *no* written opinion, *no* published, precedential decision -- were ones deserving of such treatment[10] -- and whether federal appellate decisions otherwise demonstrate the quality, consistency, fairness, and due process that your hearing notice has asked about. Indeed, from the file evidence I will today present: two appeals, each with petitions for rehearing with suggestions for rehearing *in banc*, and the §372(c) complaints against the appellate judges in those appeals, each complaint followed by petitions for Judicial Council review, you will be forced to conclude that the most significant problems are not procedural, but rest with the integrity of the judiciary itself, beginning with its complete disrespect for the ethical rules and statutes designed to ensure impartiality, 28 U.S.C. §144 and §455. This evidence is only a fraction of what CJA's members, individually, have to offer.

The file evidence I am presenting is from Judge Newman's Second Circuit. Presumably, the Second Circuit is the source for many of his claims about smallness lending to the federal judiciary's supposed quality, uniformity of decisions, and respect for Circuit precedence. This evidence blasts those claims to smithereens. And it provides graphic proof of the deliberateness with which the Second Circuit has trashed anything resembling a judicial or appellate process and the §372(c) disciplinary process. Because of its profound seriousness, we long ago provided copies to the Administrative Office for transmittal to the appropriate committees of the Judicial Conference so that they could exercise supervisory oversight, including taking steps to ensure Supreme Court review of the second appeal, now headed to that Court. Such steps would accord with the federal judiciary's exaggerated "independence of the judiciary" claims, where appellate review, whose efficacy is never questioned, is

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[10] "Given the relationship between argument and publication, it seems clear that the focus of concern ought to be on whether cases are being routed appropriately to oral argument or nonargument disposition tracks." (at p. 49, Structural and Other Alternatives for the Federal Courts of Appeals: Report to the United States Congress and the Judicial Conference of the United States, Federal Judicial Center, 1993).

regarded as the sole means for examining judicial decisions and rulings. A copy of the file of that second appeal was also provided to the ABA's current president for action by the appropriate ABA committees, including *amicus* assistance in securing Supreme Court review. Neither have responded to our serious and substantial correspondence, copies of which we are providing to the Commission so that you may further understand why in matters involving judicial integrity and misconduct, no less than in judicial selection, the general public has ample reason to disdain the Judicial and Legal Establishment.

Indeed, at the same time as the Judicial Conference has not addressed the evidentiary **[p. 6]** files we provided it establishing that 28 U.S.C. §372(c), §144, and §455 have been gutted by the federal judiciary, it has been making *false* claims to the House Judiciary Committee as to the efficacy of these statutes to advance its opposition to Sections 4 and 6 of H.R. 1252, which would modify and supplement them. For this reason, we transmitted to the House Judiciary Committee copies of our 2-1/2 year correspondence with the Administrative Office -- and the files it enclosed. Since this Commission -- as part of its hearing notice -- has asked as to "what measures should be adopted by Congress or the courts to ameliorate or overcome perceived problems in the federal appellate system or any of its circuits?", you should particularly examine our two March 1998 memoranda to the House Judiciary Committee, copies of which we are providing you. These memoranda, copies of which we sent to the Administrative Office and to the ABA's current president for their response, highlight the need to legislatively reinforce the goals of judicial integrity which animated passage of 28 U.S.C.§144, §455, and §372(c), as well as to clarify that "judges who, for ulterior purposes, render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in impeachable conduct" (3/23/98 Memo, pp. 10-11). As reflected by my published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View (Massachusetts School of Law journal), Vol. 4, No. 1, summer 1997), which is an integral part of these memoranda, it is CJA's view that the disciplining of the federal judges for misconduct must be reposed in a body outside the federal judiciary. This is because -- in

the 18 years since Congress enacted §372(c), based on assurances from the federal judiciary that it could and would "police itself", the federal judiciary has not been doing so. As my article details, this was covered-up by the National Commission on Judicial Discipline and Removal in its methodologically-flawed and dishonest report. A copy of that article is annexed to this statement.

Of the two Second Circuit appeal files, the second appeal is the more important. It is singlely focused on the issue of judicial bias, encompassing, in a single litigation, *eight* separate recusal applications: against the district judge, the Chief Judge of the district, the Second Circuit Court of Appeals, the appellate panel, specific Second Circuit Court of Appeals judges -- *all* either ignored *without* adjudication or denied *without* reasons, except in the case of the district judge, whose denial of recusal and of reargument/renewal were for reasons whose utter falsity, both factually and legally, was demonstrated on appeal, but *not* adjudicated by the appellate panel. Moreover, because the petition for rehearing with suggestion for rehearing *in banc* in that appeal incorporated the §372(c) complaints filed against the district judge and appellate panel, subsequently dumped by Second Circuit Chief Judge Ralph Winter as "merits-related", those complaints -- which under the §372(c) statute are not judicially reviewable -- will nonetheless be part of the record before the Supreme Court on the upcoming petition for certiorari. Such a record -- and the anticipated "Question Presented" -- will provide the Court with an unparalleled opportunity to exercise its "power of supervision" not only over the Second Circuit, which has refused to address the bias issues in the case in either a judicial or disciplinary context, but over the Circuit Chief Judges, Acting Circuit Chief Judges, and the Circuit Judicial Councils across the country, who, throughout the 18 years since §372(c) was enacted, have not developed case law on the relationship between appellate and disciplinary remedies, nor defined the "merits-related" ground for dismissal under §372(c), nor the discretion, afforded by the statute, to review even "merits-related" complaints. Ironically, virtually the only case law is from the Ninth Circuit and its few published decisions, from a period extending **[p. 7]** before §372(c) was enacted, have undergone no discernible development or refinement in any of the

Circuits. As my article points out (at p.95), the federal judiciary has deliberately kept the "merits-related" category vague and all-encompassing so as to dump virtually all §372(c) complaints as "merits-related".

Much as I would, therefore, like the skip directly to the second appeal, the first appeal has unique historical significance. We presented it to both the National Commission on Judicial Discipline and Removal and to the Judicial Conference's Long-Range Committee to demonstrate the fallacy of blind reliance on appellate review as a "fundamental check" for either judicial misconduct or "error", or the claim that a small judiciary acts to restrain errant judges through informal "peer disapproval". Before each of these bodies -- as before you today -- Judge Newman testified. Consequently, it deserves reiteration that the file of that first appeal not only explodes Judge Newman's keep-the-judiciary-small claims, but exposes his hypocrisy -- since he is the author of the facially-aberrant and lawless appellate decision to which his relatively small Circuit put its imprimatur by failing to rehear it *in banc*. Here, too, the National Commission and the Long-Range Committee simply ignored the tell-tale evidence in their repetition of those claims in their final reports. I would point out that the appeal which my article describes, without identifying details (at pp. 95-97) is this appeal. Likewise, the §372(c) complaint, whose extraordinary pre-filing odyssey the article chronicles, together with its "merits-related" dismissal by dishonest and violative Circuit orders, is a complaint against then Circuit Chief Judge Newman for his biased and knowingly fraudulent conduct in the appeal.

The primary functions of the Circuit Courts of Appeals -- as defined by the Judicial Conference's Long-Range Plan (at p. 41) -- are two-fold: "error correction" and "rule declaration"[11]. The two appeals each presented the Second Circuit Court of Appeals with the duty to fulfil both those functions. They also presented it with a frequently forgotten additional function: safeguarding judicial integrity by taking

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[11] *See also* Structural and Other Alternatives for the Federal Courts of Appeals, *supra*, at p 7.

action against the district judge, as required by the Judicial Conference's own Code of Judicial Conduct for U.S. Judges[12], to wit, disciplinary, if not criminal, referral. Neither appeal was occasioned by "error" of the district judge, but by judicial misconduct, rising to the level of judicial fraud. This was highlighted by the appellants' briefs in each appeal, with meticulous record references establishing that each of the district judges had authored decisions which, in every material respect, they *knew* to be factually false, fabricated, misleading and violative of fundamental black-letter law and rudimentary due process.

At issue in the first appeal was the district judge's imposition of nearly $100,000 counsel fees against two plaintiffs in a housing discrimination case in favor of fully-insured defendants, who had incurred *no* costs and for whom it was a windfall. The plaintiffs tried to obviate [p. 8] the appeal. They moved to vacate the fee award on the jurisdictional grounds that the defendants were not the "real party in interest" and that the insurer was a "necessary party". Rather than adjudicating that unopposed motion, it was referred by a Circuit judge to the panel hearing the appeal. This then necessitated perfecting the appeal, with the consequent -- and heaviest -- cost and burden falling on the two plaintiffs, who were individual litigants.

The assigned appellate panel consisted of three seasoned Second Circuit judges. Presiding was Judge Jon Newman, who, the following year -- 1993 -- was to become the Circuit's Chief Judge, Judge Ralph Winter, who was to succeed him as Chief Judge (a position he currently holds), and Judge Edward Lumbard, who had long before been the Circuit's Chief Judge. Appellants were given 10 minutes for their oral argument -- and then waited more than half a year for the cover-up appellate decision -- a decision, *per* Judge Newman, which *never* cited the record once and did *not* identify *any* of the appellants' legal arguments or those in the *amicus* brief of the NAACP Legal Defense and Educational Fund. This included

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[12] Canon 3B(3) of the Judicial Conference's Code of Judicial Conduct. *See also*, Canon 3D of the ABA's Code of Judicial Conduct.

appellant's threshold jurisdictional argument -- which the panel denied, *without reasons*, on the pre-typed motion form. *On its face*, the appellate decision -- issued for publication -- was internally contradictory and violative of a litany of bedrock decisional law of the Circuit and the U.S. Supreme Court. *Sua sponte*, it invoked the district judge's "inherent power"[13] to maintain intact the district judge's alternative $100,000 sanctions award against the plaintiffs, which, being arbitrary, uncorrelated, and not the product of any hearing or requisite findings, flouted the standards of Rule 11 and 28 U.S.C. §1927. This *sua sponte* "inherent power" award was not only *without* notice to the plaintiffs, but on a record which was devoid of *any* sanctionable conduct by them. Indeed, the *only* sanctionable conduct was by defendants. They had won the case by sabotaging plaintiffs' discovery rights through a stratagem of fraud and perjury, in which they had been aided and abetted by the district judge. This was particularized by plaintiffs' fully-documented and uncontroverted Rule 60(b)(3) motion to vacate for fraud, which was part of the appeal.

Yet on appellants' petition for rehearing with suggestion for rehearing *en banc*, where the 15-page limit was, with difficulty, sufficient to recite the egregious and unprecedented nature of the appellate decision, not a single one of the judges of Judge Newman's reasonably small, collegial Circuit exercised any "quality control" by requesting a vote on rehearing. For that matter, neither did the Supreme Court exercise its power of supervision when the appellants presented a petition for a writ of certiorari -- or, thereafter, when their supplemental petition for rehearing to the Supreme Court identified the undisclosed bias and retaliatory motive animating the Second Circuit's fraudulent and lawless decision and that of the

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[13] Judge Newman rested on the Supreme Court's imprimatur on "inherent power" in *Chambers v. Nasco*, 111 S.Ct. 2123 (1991), reh. denied, 112 S.Ct. 12 (1991) -- *without* adhering to any of the due process prerequisites recognized in the majority opinion, authored by Justice White.

district judge[14]. By then, Judge Newman had not only become [p. 9] the Second Circuit's Chief Judge, but was, in that very period, being widely-publicized as a leading contender for the Supreme Court seat being vacated by the retiring Justice White!

The second appeal came before the Second Circuit five years later, in 1997. Here too, the plaintiff-appellant sought to obviate the appeal. She insisted on a case management conference, which was duly called by a Circuit staff attorney. The conference was sabotaged by counsel for defendants, the New York State Attorney General, himself a defendant. In violation of the notice and order announcing the conference, the Attorney General sent an assistant to the conference who knew nothing about the case and had no authority to do anything, even to agree to the most minimal and legally-compelled stipulations, including those suggested by the Staff Attorney. This necessitated perfecting the appeal. A three-judge Circuit panel thereafter approved such sabotage by denying, *without* reasons, appellant's fully-documented motion for sanctions against the Attorney General for this and other misconduct in the case management phase of the appeal. Encompassed in its one-word denial was a denial of appellant's particularized application for the Circuit's recusal and to transfer the appeal to another Circuit, which prefaced the motion.

The panel thereafter assigned also consisted of a former Second Circuit Chief Judge, Thomas Meskill[15]. Joining him was Second Circuit Judge Dennis Jacobs, who presided, as well as a Second Circuit district judge, Edward Korman. The utter inappropriateness of the panel's allocation of only five minutes for oral

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[14] The supplemental petition for rehearing was precipitated by the Supreme Court's granting of review to *U.S. v. Liteky*, involving the interpretation of 28 U.S.C. §455(a), and argued that the appellants' case was a companion case that would provide the Court with the opportunity to more fully explore the bias issues. *See* fn. 17, *infra*.

[15] In fact, he had been its Chief Judge in the period of the first appeal -- thereafter succeeded in that position by Judge Newman.

argument -- and its not-for-publication, no citation Summary Order, which it rendered less than two weeks later -- cannot be recognized without examining the appellate record since it is not apparent from the Summary Order, which bears little resemblance to the record. You need look no further than the verified complaint. It suffices to establish the transcending importance of the underlying action under 42 U.S.C. §1983 for civil rights violations and for a declaration of the unconstitutionality of New York's attorney disciplinary law, as written and as applied. The particularized allegations include -- and they are *all* expunged from the Summary Order -- that high-ranking New York state judges had retaliated against a judicial whistle-blowing attorney who was challenging the political manipulation of state judicial elections by issuing an "interim" order suspending her law license, immediately, indefinitely, and unconditionally, *without* written charges, *without* a hearing, *without* findings, *without* reasons, thereafter denying her *any* post-suspension hearing or *any* appellate or independent review[16]. This was all in knowing and deliberate **[p. 10]** violation of *express* requirements of the state's disciplinary law and of clear and controlling decisional law of the state's highest court, depriving plaintiff of fundamental due process and equal protection, and designed to silence her for legitimate exercise of her First Amendment rights. In this, the State Attorney General was alleged to be an active collusive participant, as were the at-will judicial appointees who are part of the attorney disciplinary mechanism that is entirely controlled by the state judiciary. These extraordinary allegations not only appear over and over in the record -- including in CJA's $16,770 New York Times ad, "*Where Do You Go When Judges Break the Law?*" (Op-Ed page, 10/26/94), reprinted in the New York Law Journal (11/1/94, p. 9) -- which was part of the record [R-606]-- but were all supported by uncontroverted evidentiary proof.

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[16] So extraordinary were the particularized allegations of the verified complaint that they overcame *all* pleading defenses, including the seemingly insurmountable hurdle to judicial immunity articulated by Justice White's majority opinion in *Dennis v. Sparks*, 98 S.Ct. 1099 (1978), a point emphasized before the district judge and on appeal. For a discussion of how the facts alleged -- and documented -- brought this case within the analysis of *Dennis v. Sparks*, *see* the Record on Appeal, pp. 479-483].

Likewise of transcending significance was the posture of the case on appeal, because what was involved was the integrity of the proceedings in the district court. Appellant's brief highlighted this, presenting a SOLE transcending issue: the disqualifying "pervasive bias" of the district judge, as evidenced by his rulings and failures to rule on the motion submissions before him[17]. This included his denial of appellant's fully-documented and uncontroverted motions for his recusal under 28 U.S.C. §144 and §455 [Point I], his failure to adjudicate *any* of plaintiff's repeated and fully-documented and uncontroverted sanctions applications against defendants [Point II], his *sua sponte* and *without* notice conversion of defendants' dismissal motion -- the subject of one of plaintiff's unadjudicated sanctions applications -- into a motion for summary judgment in their favor, based on *no* evidence whatever [Point IV], and his simultaneous denial, *without* reasons, of plaintiff's fully-documented and uncontroverted summary judgment application [Point V]. Appellant's brief demonstrated that the appeal was not about good-faith conduct by the district judge, but fraud by him, in concert with the defendants, and requested disciplinary and criminal referral of them "based upon their filing of false, fraudulent, and deceptive instruments, obstruction of justice, collusion, corruption, and other official misconduct" (Brief, at p. 76).

Indeed, because of the transcending public importance of the case, CJA ran a $3,000 ad, entitled "*Restraining 'Liars in the Courtroom' and on the Public Payroll*", in The New York Law Journal (8/27/97, pp. 3-4), two days before oral argument, which invited the public to be present. In fact, appellant did not have even five minutes for her intended presentation. She was interrupted, within 30 seconds, by the Circuit judges, who insisted that she answer

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[17] On the issue of "pervasive bias", the appellant's brief argued that the case not only met the standard recognized by the Supreme Court in *Liteky*, 510 U.S. 540, 114 S.Ct. 1147 (1994), but posited the possibility that it would be the first in the Circuit where such "pervasive bias" was established. *See* Appellant's brief, pp. 32-33.

their questions -- questions, which, at best, reflected their complete ignorance of the case, if not a deliberate attempt by them to impede her presentment of the key issues[18]. These issues, included the Circuit's **[p. 11]** disqualification for bias. In reiterating her prior written motion for the Circuit's disqualification, the presiding judge cut appellant off, mid-sentence, with no ruling.

The panel's not-for-publication Summary Order, signed by each of its three judges, also did *not* rule on appellant's recusal application. Nor did it even identify that such application had been made. *Without* citing the record once, and *without* identifying the SOLE transcending issue raised by appellant's brief: the district judge's "pervasive bias", the panel *expressly* stated that it was *not* ruling on the district judge's adjudications of the motion-submissions before him. Instead, the panel fashioned its own *sua sponte* dismissal of appellant's verified complaint on grounds of *Rooker-Feldman* and *unspecified* preclusion principles -- grounds shown by her brief to be *inapplicable* to her complaint's pivotal pleaded allegations -- *all* of which allegations the Summary Order expurgated.

All this was pointed out in appellant's petition for rehearing with suggestion for rehearing *in banc*, whose first paragraph explicitly posed the question:

> "...whether -- and to what extent -- appellate review and 'peer disapproval' are 'fundamental checks' of judicial misconduct, as claimed by the National Commission on Judicial Discipline and Removal in its 1993 Report -- and whether a remedy for such judicial misconduct exists under 28 U.S.C §372(c)..."

Incorporated by reference in appellant's petition were two rather extraordinary documents: (1) a motion to recuse the panel and

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[18] The transcript of the oral argument is Exhibit "K" to appellant's post-appeal recusal/vacatur for fraud motion and is extensively discussed and analyzed at pp. 15-32 of the motion. *See* file marked POST-APPEAL PROCEEDINGS.

the Second Circuit, to which was joined a motion to vacate for fraud the panel's Summary Order and the district judge's Judgment; and (2) §372(c) complaints against the Circuit panel and district judge, which also sought recusal of the Circuit and transfer. These juxtaposed for the Circuit two available, though not mutually exclusive options: a judicial/appellate remedy or a disciplinary one to address corruption on two levels of the federal judiciary, wholly subverting the judicial process and protecting defendant state judges -- and the Attorney General -- whose corrupt conduct was not only alleged with particularity, but documented by the uncontroverted record.

Again, the response of Judge Newman's collegial Second Circuit was that not a single one of its supposedly excellent, high-quality judges requested a vote on appellant's *in banc* petition. Appellant's fact-specific, fully-documented, and uncontroverted recusal/vacatur for fraud motion was denied by the panel in a one-word order, which none of the judges saw fit to sign. As to appellant's §372(c) complaints, likewise fact-specific and fully-documented, Second Circuit Chief Judge Winter dumped them as "merits- related" in a conclusory order, whose dishonesty included failing to address -- or identify -- appellant's specific contention that he -- and the Circuit -- were disqualified for bias and self-interest from adjudicating the complaints. Appellant's petition for review to the Second Circuit Judicial Council is pending.

The final question posed to witnesses by this Commission's hearing notice is "what **[p. 12]** is working well in the federal appellate courts?" Based on these two Second Circuit appeals, there is nothing working well in this Circuit -- a position echoed by CJA members having Second Circuit experience. The same is echoed as to other Circuits by CJA members, who relate stories of judicial lawlessness in the Circuit Courts of Appeals. Although CJA does not yet have the staff and resources to verify their claims, based on these two fully-documented cases, we have no reason to discount the horrors they describe to us. Our members routinely use words like dishonest, fraudulent, perjurious, cover-up, conspiracy to describe what goes on in the federal courts -- which, of course, is the kind of judicial

misconduct these two cases show[19].

This Commission, composed of four federal judges and a former ABA president, is bound by the ethical codes of the Judicial Conference and the ABA to take corrective action[20]. Moreover, the situation herein documented is too dangerous to defer remedial action for the many, many months until you render your report to Congress. As soon as you verify what is documented in these appeal files, in the files of the judicial misconduct complaints, and in our submissions on the federal judicial screening process, we urge you to protect the public and the rule of law in any and every way you can devise. Can there be any doubt but that that is what a representative citizens' commission would do?

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[19] At your April 3rd hearing, John Meites, appearing on behalf of the Chicago Council of Lawyers brought to your attention that organization's evaluation of the Seventh Circuit, appearing in 43 DePaul Law Review, pp. 672-857 (1994). It includes description of decisions not based on facts in the record, etc. Such appellate level dishonesty is graphically described by Professor Anthony D'Amato in his gripping law review article, "*The Ultimate Injustice: When the Court Misstates the Facts*", Cardozo Law Review, Vol 11: 1313 (1989), which includes Professor Monroe Freedman's memorable quote about dishonest federal appellate decisions, particularly of the no-citation, not-for-publication variety.

[20] *See* footnote 12, *infra.*

PETITIONER'S LETTER, BY HER PARALEGAL ASSISTANT, ELENA RUTH SASSOWER, TO LEE RADEK, CHIEF OF THE PUBLIC INTEGRITY SECTION, CRIMINAL DIVISION, U.S. JUSTICE DEPARTMENT, DATED JULY 27, 1998

BY CERTIFIED MAIL/RRR
P-543-172-749

July 27, 1998

Lee Radek, Chief
Public Integrity Section, Criminal Division
United States Justice Department
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

RE: Request for Criminal Investigation and Prosecution; Endorsement of *amicus* support by the Solicitor General of Supreme Court review of *Sassower v. Mangano, et al.*, Supreme Court Docket #98-106; Notification to Congress

Dear Mr. Radek:

Enclosed is a copy of our July 20, 1998 letter to Solicitor General Seth Waxman, seeking his *amicus* support for Supreme Court review of the petition for a writ of certiorari in *Sassower v. Mangano, et al.* As summarized, *Sassower v. Mangano* is a federal action under 42 U.S.C. §1983 challenging criminal conduct by state public officials, whose odyssey in the Second Circuit has exposed systemic corruption in the Circuit, protecting those state officials. This Second Circuit corruption embraces the judicial and appellate processes, as well as the federal judicial disciplinary mechanism under 28 U.S.C. §372(c). For this reason, the full record in *Sassower v. Mangano* is enclosed so that the Public Integrity Section can undertake the investigation and prosecution that is its statutory duty, as well as expedite the Section's endorsement of our request for the Solicitor General's *amicus* support.

For your convenience, the record in *Sassower v. Mangano* is divided into three folders: The APPEAL, THE CASE MANAGEMENT PHASE, and the POST-APPELLATE PROCEEDINGS. Established, *prima facie*, by the documents comprising the record are the following: (1) that the Second Circuit, on both district and circuit levels, "threw" the case by annihilating *all* cognizable legal standards, including knowing falsification of the factual record; (2) that the Circuit corrupted the §372(c) federal disciplinary process by dishonest decisions, similarly annihilating all cognizable legal standards; (3) that the consequence of this federal judicial misconduct was to protect the high-ranking New York State public officials, sued for corruption and civil rights violations; (4) that at both district and circuit levels the defendant public officials, represented by New York's highest law [p. 2] enforcement officer, the State Attorney General, himself a co-defendant, engaged in litigation fraud and misconduct; and (5) that such litigation fraud and misconduct was the direct result of the fact that the public official defendants had NO legitimate defense to the verified Complaint's material allegations of their corruption and official misconduct.

The extraordinary material allegations of the Complaint are highlighted by the enclosed cert petition (at pp. 2-5): that judges of New York's Appellate Division, Second Department misused their judicial and disciplinary powers for ulterior and political purposes, viciously retaliating against plaintiff Doris L. Sassower for her judicial whistle-blowing advocacy. That retaliation included, most egregiously, a June 14, 1991 "interim" order, which immediately, indefinitely, and unconditionally suspended plaintiff's law license -- an order *unsupported* by written charges, *without* findings, *without* reasons, and *without* a hearing, which the state judicial defendants knew to be fraudulent and which they thereafter perpetuated by denying, *without* reasons, plaintiff's motions for the immediate vacatur of the suspension to which she was entitled under black-letter law of the New York Court of Appeals, *Matter of Nuey*, 61 N.Y.2d 513, 474 N.Y.S.2d 714 (1984), and *Matter of Russakoff*, 79 N.Y.2d 520, 583 N.Y.S.2d 949 (1992), and by denying her, likewise *without* reasons, any post-suspension hearing, as well as any appellate review. These judicial defendants then subverted plaintiff's attempt to secure

independent review by refusing to recuse themselves from the state challenge she brought against them under Article 78 of New York's Civil Practice Law and Rules (CPLR). In this subversion of the most fundamental rules of judicial disqualification and of the purpose of the historic common law writs, as codified in Article 78, the State Attorney General was fully complicitous. It was the State Attorney General's fraudulent conduct in that proceeding which resulted in his being named a defendant in this §1983 federal action.

As alleged by the Complaint -- reproduced, in full, in the cert appendix [A-49-100] -- the consequence of the state judicial defendants' fraudulent suspension of plaintiff's law license was to silence her as a voice for judicial reform, to discredit her, and to stop her legal challenge to the manipulation of state judicial elections by Democratic and Republican party leaders. As alleged, at the time the state judicial defendants issued the "interim" suspension order, plaintiff was *pro bono* counsel in a voting rights case under New York's Election Law, *Castracan v. Colavita*, suing the leaders of the Democratic and Republican parties in the Ninth Judicial District of New York for corrupting state judicial elections. The lawsuit challenged as illegal, unethical, and unconstitutional a written Deal wherein these party leaders traded, by cross-endorsement, seven judgeships, over a three-year period and which bound judicial nominees to terms and conditions including early resignations and a split of party patronage. The party leaders then implemented the Deal at judicial nominating conventions violating New York's Election Law. As alleged, the state judiciary "threw" the *Castracan* case, as well as the related Election Law case, *Sady v. Murphy*, by dishonest decisions which violated elementary legal standards and falsified the factual record. Because of the powerful political interests involved on the state level, plaintiff was unable to secure redress from the other branches of state government either as to the corruption of the state judicial process in those **[p. 3]** cases or the unlawful and retaliatory suspension of her law license.

These specific allegations of the Verified Complaint are *not* new to the Justice Department. Nearly four years ago, by letter dated December 30, 1994, the Center for Judicial Accountability, Inc. (CJA) -- the

non-partisan, non-profit citizens organization co-founded by the plaintiff and myself -- sent a copy of the §1983 federal Complaint to the Justice Department's Voting Rights Section, then engaged in litigation in which the New York State Attorney General was defending against a Justice Department challenge under the Voting Rights Act to state judicial elections. Such letter followed a series of letters from us, transmitting extensive documentation to the Voting Rights Section, including the full record of the *Castracan v. Colavita* and *Sady v. Murphy* Election Law cases -- cases spearheaded by CJA's predecessor local group. CJA's letters to Chris Herren, an attorney with the Voting Rights Section -- dated April 26, 1994 (Exhibit "A"), May 10. 1994 (Exhibit "B"), May 23, 1994 (Exhibit "C") and December 30, 1994 (Exhibit "D") -- meticulously itemized the transmitted materials and particularized their evidentiary significance in establishing the political manipulation of New York State judicial elections and the judicial process and the complicity of all branches of state government, including state agencies charged with specific oversight and investigatory functions, among them, the New York State Board of Elections, the New York State Commission on Judicial Conduct, and the New York State Ethics Commission.

CJA's initial April 26, 1994 letter to Mr. Herren (Exhibit "A") was quite specific as the seriousness of the corruption, collusion, and cover-up on the state level demonstrated by the transmitted materials and other proffered documentation:

> "Let there be no mistake about it: what is here involved is criminal conduct of the most profound nature, which should be referred for criminal investigation by the Justice Department." (Exhibit "A", p. 5, emphasis in the original)

Indeed, the sentence immediately following pointed out that this was not our first contact with the Justice Department:

> "as early as January 1991, we notified the U.S. Attorney in White Plains (914-993-1902) of the political machinations in the Ninth Judicial District [of

> New York], affecting the integrity of the franchise and the judiciary, and, in March 1992, transmitted to that office the same full set of papers in Castracan and Sady as is herein being transmitted." (Exhibit "A", p. 5)[1].

These two sentences were quoted, six months later, in CJA's December 30, 1994 letter to Mr. **[p. 4]** Herren, which, after additional description of the on-going cover-up on the state level which we had documented, *expressly* requested referral to the Justice Department's Public Integrity Section (Exhibit "D", p. 2).

Eight months later, with no response either from Mr. Herren or the Public Integrity Section, we sent Mr. Herren a copy of CJA's August 1, 1995 letter to Jonathan Rosenberg, Deputy Chief of the Criminal Division of the U.S. Attorney's office for the Southern District of New York (Exhibit "G-1"), to which we affixed a handwritten note requesting him to find out who we should speak to in the Public Integrity Section (Exhibit "G-2"). That letter described

> "the utter perversion of the Article 78 remedy by the New York Attorney General's office and the New York State courts when what is being challenged are politically powerful judges and the system that protects them".

Enclosed with our letter to Mr. Rosenberg was substantiating proof: papers from *two* separate Article 78 proceedings: (1) the cert papers in plaintiff's Article 78 proceeding against the state judicial defendants, *Sassower v. Mangano, et al.* (S.Ct. #94-1546); and (2) a copy of the record in plaintiff's Article 78 proceeding against the New York State Commission on Judicial Conduct, *Sassower v. Commission on Judicial Conduct of the State of New York* (NY Co.

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[1] CJA's 1991 correspondence with the U.S. Attorney's Office is annexed hereto as Exhibit "E".

Clerk #95-109141)[2].

We received no response from Mr. Herren. Indeed, there was no response from either the Justice Department's Voting Rights Section or the Public Integrity Section to any of the aforesaid letters and transmitted evidentiary proof. Nor did we receive any response from Mr. Rosenberg, to whom, on August 17, 1995, we hand-delivered a copy of our Letter to the Editor, "*Commission Abandons Investigative Mandate*", published in the August 14, 1995 New York Law Journal, on which we wrote an urgent handwritten note:

> "We need intervention by the U.S. Attorney's office. As the papers in your possession reflect -- the state judicial process has been subverted in order to cover-up and protect judicial corruption in this state. All standards have been abandoned." (Exhibit "G-3").

It took nearly two years for Michelle Hirshman, Chief of the Corruption Unit for the U.S. Attorney's office in the Southern District of New York -- to whom Mr. Rosenberg transmitted our materials -- to respond -- and then only after we wrote her a May 6, 1997 letter complaining of her [p. 5] non-response (Exhibit "G-4"). Her May 19, 1997 letter consisted of a bald and conclusory assertion that "there did not appear to be a basis to initiate a federal criminal investigation"[3]

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[2] The U.S. Attorney for the Southern District of New York had previously been served with a copy of the Notice of Petition and Verified Petition in that Article 78 proceeding under a Notice of Right to Seek Intervention on behalf of the public. The U.S. Attorney failed to respond thereto (Exhibit "F": Notice of right to Seek Intervention and Notice of Petition).

[3] Ms. Hirshman's May 19th letter (Exhibit "G-5") noted that we had been in contact with the F.B.I. -- a fact readily discernible since the F.B.I. was an indicated recipient of our May 6th letter to her (Exhibit "G-4"). Although we gave the F.B.I an extensive personal interview in July 1996, providing evidentiary materials then and thereafter (Exhibit "H"), corroborative of the corruption of state judicial elections, political manipulation of state judicial appointments, and the pervasive collusion and cover-up by state public officials and agencies, the F.B.I. failed to follow-up -- at least with us.

(Exhibit "G-5"). Ms. Hirshman purported that such assessment was based "on review of the documents" we had provided. This, despite the fact that those documents detailed and substantiated that the State Attorney General and state judiciary were utilizing a *modus operandi* of fraud to dispose of Article 78 proceedings challenging state judicial corruption and a pervasive cover-up by state officials and agencies. Six weeks later, Ms. Hirshman sent us a coverletter (Exhibit "G-6") returning the substantiating documents enclosed by our August 1, 1994 letter -- all in uncreased, obviously unread condition. So that you can see this for yourself -- and make your own independent assessment of these documents -- they are enclosed herewith in the same envelope in which Ms. Hirshman returned them to us.

It may be noted that two months after Ms. Hirshman's return of these materials, CJA ran a $3,000 public interest ad in the New York Law Journal, entitled, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (8/27/97, pp. 3-4) (Exhibit "I-1"). It detailed the *modus operandi* by which the state Article 78 remedy -- designed to protect the public from governmental corruption and abuse of power -- was itself being corrupted by the State Attorney General in collusion with the state judiciary. Specifically described were the same *two* Article 78 proceedings as to which Ms. Hirshman had opined that there "did not appear a basis to initiate a federal criminal investigation". The ad asserted that the corruption of Article 78 was *easily verifiable* from the record of those cases and supplied the pertinent court index and docket numbers. The ad also asserted that the §1983 federal remedy -- likewise intended as a safeguard against government abuse and corruption -- was being corrupted by the State Attorney General and the federal judiciary, citing the *Sassower v. Mangano* federal action, as to which both the district and Second Circuit docket numbers were provided.

Such prominently-placed ad, which became part of the record before the Circuit in the *Sassower v. Mangano* post-appellate proceedings, is included in the appendix of the enclosed cert petition [A- 262-268]. Also included in the appendix [A-269-271] is CJA's $20,000 public interest ad, "*Where Do You Go When Judges Break the Law?*" (Exhibit "I-2"), published on the Op-Ed page of the October 26, 1994

New York Times and, on November 1, 1994, in the New York Law Journal, about the political manipulation of judicial elections, the dumping of plaintiff's Election Law challenge by the state judiciary, its retaliatory suspension of her law license, and the subversion of the state Article 78 remedy by judges who refused to recuse themselves from their own case. As reflected by CJA's **[p. 6]** December 30, 1994 letter to Mr. Herren (Exhibit "D"), "*Where Do You Go When Judges Break the Law?*" was annexed as an exhibit. The ad was also highlighted by CJA's August 1, 1995 letter to Mr. Rosenberg (Exhibit "G-1"), enclosing substantiating proof, described by Ms. Hirshman as not providing "a basis to initiate a federal criminal investigation."

The U.S. Justice Department's profound disinterest and dishonesty in responding to the aforesaid documentary proof of corruption of state judicial elections and the state judicial process in which state officials and agencies, including the State Attorney General, are actively complicitous is inconsistent with the role of the Public Integrity Section, as described in the Section's 1995 Annual Report. The introduction to the Report describes the Section's mandate as "overseeing the federal effort to combat corruption through the prosecution of elected and appointed public officials at all levels of government", with additional responsibility "for supervising the handling of investigations and prosecutions of election crimes". It identifies the Section as having "a staff of approximately 25 to 30 attorneys, including experts in election law..." and functioning "as a source of advice and expertise to prosecutors and investigators" in the U.S. Attorney's offices and Justice Department. This, in addition to sponsoring annual four-day seminars "for prosecutors and agents involved in public corruption investigations and prosecutions", including "legal training in the statutes most commonly used in corruption cases..." (at p. 6).

As best known to the Department, we are not the first Sassowers to present to it proof of New York state judicial corruption and retaliation, as well as of complicity by state officials, including the State Attorney General. For nearly two decades, George Sassower, our whistle-blowing family relative, has been providing similar

evidence, together with evidence of conspiratorial cover-up by the federal judiciary, which has similarly "thrown" his lawsuits against state judges and the State Attorney General by fraudulent decisions. As we understand it, the Justice Department's response has been to collusively participate with the federal judiciary in its cover-up of state judicial corruption. Indeed, for many years Mr. Sassower has actively litigated with the Justice Department, based on his claim that it has unlawfully and improperly defended federal judges, sued in their personal capacities by his lawsuits against them, including without "scope" certifications, as required by 28 U.S.C. §2679(d), and without any notice of claim being filed, as required by 28 U.S.C. §2675(a).

Mr. Sassower's allegations of criminal conduct by the Second Circuit -- and of the free legal defense it has obtained from the Justice Department -- were included in a footnote to a §372(c) judicial misconduct complaint we filed in March 1996 against the Circuit's then Chief Judge, Jon Newman -- a copy of which we sent to you under a March 28, 1995 coverletter (Exhibit "J-1"). The coverletter requested that the Public Integrity Section investigate and prosecute Judge Newman and his complicitous Circuit brethren for corruption. The complaint particularized what was involved: Judge Newman had used his judicial office to retaliate against Doris Sassower and myself for our familial relationship with Mr. Sassower by authoring a fraudulent decision in our appeal in *Sassower v. Field*. Such decision imposed, by a *sua sponte* invocation of "inherent power", a $100,000 [p. 7] sanction award against us -- as to which there was not the slightest factual or legal basis -- in favor of fully-insured defendants to whom it was a windfall and whose litigation fraud and misconduct we had documented in an uncontroverted Rule 60(b)(3) motion, which was part of the appeal. Indeed, Judge Newman's decision never once cited to the record or identified a single one of our appellate arguments. Our complaint emphasized that Judge Newman's fraudulent decision was *readily- verifiable*, not only from examination of the factual record, but from the decision itself, which is facially aberrant, contradictory, and violates bedrock law of the Circuit and Supreme Court. Enclosed with the complaint were documents facilitating that verification: our Petition for Rehearing with Suggestion for Rehearing *En Banc* to the Second Circuit and three of

our submissions to the Supreme Court -- all of which were copiously cross-referenced to the record and presented controlling law.

Even without the accompanying, referred-to documentation, examination of that §372(c) complaint (Exhibit "J-1") exposes the disingenuousness of the response of your Deputy Chief, Jo Ann Farrington, whose May 17, 1996 letter to us asserted that the Public Integrity Section had "concluded that there is insufficient basis to commence a federal criminal investigation" because "we have no information to suggest that the actions by the judges that you complained of constitutes a federal criminal offense." (Exhibit "J-2"). To advance such pretense, Ms. Farrington purported that the complaint, which she claimed had been reviewed with the accompanying documentation, was about "individual disagreement" with the "rulings against [us]" in the case. By virtue of her high-ranking position in the Public Integrity Section, Ms. Farrington can be assumed to recognize that this is a gross mischaracterization of the complaint -- whose gravamen was retaliation by federal judges motivated by hostility toward George Sassower, as to which the Public Integrity Section had direct personal knowledge -- and which was substantiated by the complaint's fact-specific details and record proof that the *Sassower v. Field* appellate decision was a knowing and deliberate fraud.

At best, Ms. Farrington's letter reinforces that the Public Integrity Section is in dire need of guidance as to when judicial decisions are properly the subject of criminal investigation. The straightforward governing principle, set forth at pp. 25-26 of the enclosed *Sassower v. Mangano* petition and relevant to our request herein for criminal investigation and prosecution of the Second Circuit, is that "judges who render dishonest decisions -- which they *know* to be devoid of factual or legal basis -- are engaging in criminal and impeachable conduct.". *If* the Public Integrity Section does not know this, notwithstanding its expertise in criminal law and public corruption, that is all the more reason for it to endorse the petition's request that the Supreme Court clarify that standard as part of its ethically-mandated referral to the Public Integrity Section and the House Judiciary Committee.

The record in *Sassower v. Mangano* contains the record of the Second Circuit's disposition of our §372(c) complaint against Judge Newman, which was part of plaintiff's October 10, 1997 motion to recuse the Circuit from *Sassower v. Mangano* and to vacate for fraud the appellate panel's Summary [p. 8] Order and the district judge's Judgment[4]. Examination of the Circuit's disposition of that complaint[5] will give you an additional look at its *modus operandi* of dumping §372(c) complaints by dishonest decisions -- beyond the dishonestly dumped §372(c) complaints against the district judge and appellate panel in *Sassower v. Mangano*. This is important because the cert petition focuses on the Second Circuit's subversion of the §372(c) disciplinary remedy. It is also important because the Justice Department has, knowingly or unknowingly, misled Congress as to the adequacy and efficacy of that remedy ["the 1980 Act"] and as to the existence of other remedies for judicial bias. It has done this by its letters to the House Judiciary Committee's Subcommittee on Courts and Intellectual Property, dated March 10, 1998 and June 10, 1997[6], opposing Sections 4 and 6 of H.R. 1252, addressed to those issues. CJA's own presentation to the House Judiciary Committee on Sections 4 and 6 -- its March 10, 1993 and March 23, 1998 Memoranda -- is part of the record in *Sassower v. Mangano* -- and included in the appendix to the cert petition [A-295, A-301]. Such Memoranda particularize that the Judicial Conference's opposition to those sections was knowingly false and misleading and that the 1993 Report of the National Commission on Judicial Discipline and Removal, on which it relied, is "methodologically flawed and

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[4] *See* Exhibits "C", "D", "E", and "F" thereto.

[5] The Circuit's disposition of our §372(c) complaint against Judge Newman is described -- albeit without identifying particulars -- in our published article, "*Without Merit: The Empty Promise of Judicial Discipline*" (The Long Term View (Massachusetts School of Law), Vol. 4, No. 1 (summer 1997)), reprinted in the appendix of the cert petition at A-207-220. [*See* A-217-219].

[6] Those letters, as reprinted in the House Judiciary Committee's Report on H.R. 1252 under the heading "Agency Views", are annexed as Exhibit "K-1" and "K-2".

dishonest", particularly in its study of §372(c)

In opposing Section 4, which would have amended §372(c), the Justice Department stated its reliance on the opposition presented by the Judicial Conference, asserting its view "that federal judges can and must be trusted to police their colleagues with respect to allegations of misconduct...". In opposing Section 5, which would have provided for peremptory disqualification of a district judge by civil litigants, the Justice Department, asserted "the provision is unnecessary. There are existing procedures for dealing with cases of judicial bias..." No specification was given as to what those procedures are -- except insofar as the Justice Department quoted a Circuit Chief Judge's view, appearing in The Washington Post, that "the customary recourse for litigants dissatisfied with a trial court's decision has been to pursue an appeal".

We do not know what empirical evidence, if any, was used by the Justice Department to offer to Congress its aforesaid views, on which it knew that Congress would reasonably rely. The 1993 [p. 9] Report of the National Commission, which interviewed attorneys with the Public Integrity Section and surveyed the Justice Department and U.S. Attorneys, makes plain that the Justice Department had little direct experience with the 1980 Act. In its words, "for all practical purposes, the Department has not played a significant role in calling attention to instances of misconduct or disability cognizable under the 1980 Act." (at p. 72). Indeed, it describes Justice Department attorneys as skeptical about the efficacy of the Act (at p. 71) and, moreover, loathe to file complaints for fear of retaliation against them by vindictive judges (p. 72).

Since the record in *Sassower v. Mangano* establishes the Second Circuit's corruption not only of the §372(c) disciplinary remedy, but of virtually every judicial and appellate remedy for challenging judicial bias -- and the knowledge and complicity of the Judicial Conference, to which we long ago supplied the record -- it is incumbent on the Justice Department to revise its unsubstantiated views on Sections 4 and 6 and so inform Congress so that legislative steps can be taken to protect the public. This, together with a recommendation for

impeachment of the involved Second Circuit judges.

Finally, the Justice Department should explain to Congress why, notwithstanding the requirement of 28 U.S.C. §529 that the Attorney General annually "report to Congress on the activities and operations of the Public Integrity Section" (Exhibit "L-1"), the Public Integrity Section's most recent Annual Report is for 1995 (Exhibit "L-2").

Yours for a quality judiciary and government integrity,

s/

ELENA RUTH SASSOWER,
Paralegal Assistant

Letter Read and Approved by:

s/

DORIS L. SASSOWER
Petitioner *Pro Se, Sassower v. Mangano, et al.*

Enclosures:

(1) July 20, 1998 ltr to Solicitor General Waxman, with all indicated enclosures thereto
(2) record in *Sassower v. Mangano, et al.*, #98-106
(3) envelope of materials returned by Michelle Hirshman, by 6/27/97 coverltr (Exhibit "G-5") [inventoried by CJA's 8/1/95 ltr (Exhibit "G-1") and including the original 8/17/95 note (Exhibit "G-3")

cc: Seth Waxman, U.S. Solicitor General
The Justices of the U.S. Supreme Court
Voting Rights Section, U.S. Department of Justice
Att: Chris Herren, Esq.
U.S. Attorney, Southern District of New York
Att: Michael Horowitz, Chief, Public Corruption Unit
Att: Mark Pomerantz, Chief, Criminal Division
House Judiciary Committee: Subcommittee on Courts and Intellectual Property

Att: Mitch Glazier, Chief Counsel
Att: Robert Raben, Minority Counsel
Judicial Conference of the United States
c/o Administrative Office of the United States Courts
Att: William Burchill, Jr., General Counsel
Jeffrey Barr, Assistant General Counsel
Commission on Structural Alternatives for the Federal Courts of Appeals
Att: Byron White, Chairman
New York State Attorney General Dennis Vacco,
Counsel for *Mangano et al.* respondents

LETTER OF F. ELLIOT SIEMON TO U.S. SOLICITOR GENERAL WAXMAN, DATED AUGUST 4, 1998

P. O. Box 28, Thornwood, NY 10594
August 4, 1998

Hon. Seth Waxman, Solicitor General of the United States
Department of Justice, Room 5614
950 Pennsylvania Avenue
Washington, DC 20530-0001

RE: US Supreme Court *Amicus curiae* request
Sassower v. Mangano, et al. Docket # 98-106

Dear Solicitor General Waxman:

It is a dutiful pleasure to write an open letter to you about an important opportunity to improve judicial quality. As researcher on the above-pending Supreme Court case and prospective law student, I look forward to law being more free of judicial corruption than at present.

Upon *correlating the Sassower v. Mangano briefs with judge's decisions and case law*, you'll surely agree, submitting an amicus brief, on behalf of petitioner, Doris L. Sassower, would be an important Federal Government undertaking. Not doing so, would be perceived as being on the side of "Star Chamber" injustice:

In 1991, attorney Doris L. Sassower, with a distinguished 35 year career at the bar, was about to file an appeal in a voting rights case involving NY Election Law violations. However, contrary to the federal and state constitutions, NY statutory law and the court's own disciplinary rules, Ms. Sassower, with no prior disciplinary record, was suddenly suspended by a NY court - immediately, indefinitely, unconditionally --- without written charges, without a hearing, without findings or reasons, without right of appeal, and without opportunity to face her accusers.

The Election Law violations by lawyers, judges, and political leaders of both major parties, involved an illegal written contract for a 3 year, 7 judge cross-endorsement deal. Resulting in identical

election slates, early resignations, and split of judicial patronage, such deals purposefully subvert all Constitutional right of election choice. Under the *reasonable person test*, Sassower's suspension was clear retaliation for challenging the secret, and increasing use of a *quid pro quo* deals by which many NY judges are nominated and their election illegally insured.

Correlating the briefs with the resulting decisions bears evidence of an out of control judiciary, a record replete with decisions ignoring issues before the court, suppressing, distorting, fabricating, falsifying the factual record and applicable law, etc.

If ever a case fully documented judicial fraud and corruption, it is Sassower v. Mangano, a significant case in which Rule of Law, rules of evidence, the Code of Ethics, the Constitution and the Bill of Rights... simply vanished. Corrupt judges protecting a corrupt process could do nothing else and in doing so, fully documented on the record itself, actions far beyond abused discretion or run of the mill ethical misconduct. *But the key here is correlating case briefs with the judge's decisions*. On the record is *prosecutable criminal judicial conduct*, also a function of your office.

Numerous responses to smatterings of press coverage indicate: the serious judicial misconduct in Sassower v. Mangano is not an isolated incident, but rampant nationwide and requires your immediate attention. With "Star Chamber" retaliation ending the career of a distinguished attorney like Ms. Sassower's and judicial misconduct widespread, no one is safe... we are all at risk.

With the far reaching effects of this case, your *amicus* support of Sassower, would be applauded by generations of grateful jurists and citizens alike. Personally, you will deserve an exalted place in judicial history along with the vision of the Framers of our enduring Constitution. However, the primary sworn and ethical duty of your Executive Branch office is to help enforce the Constitution of the United States.

I trust, with the full resources of your prestigious office, you will do just that.

Sincerely,

F. Elliot Siemon, Pres., ROSS-HUNT PUBLISHING

cc: For publication

INTRODUCTORY STATEMENT AND CONCLUSION TO PETITIONER'S REPLY BRIEF, filed in the Second Circuit, April 1, 1997

INTRODUCTORY STATEMENT

This Reply Brief[1] demonstrates the bad-faith and frivolous nature of Defendants' Appellees' Brief[2] and Plaintiff's entitlement to maximum sanctions under all applicable statutory and rule provisions, 28 U.S.C. §1927, Fed.R.Civ.P. Rule 11, F.R.A.P. Rules 31 and 38, as well as criminal and disciplinary referral of Defendants and their counsel, the New York State Attorney General, himself a Defendant. On this appeal, Defendants are represented by Assistant Attorney General Jay Weinstein, who defended them before the District Judge and whose flagrant, unremitting, and unadjudicated litigation misconduct is detailed in Plaintiff's Appellant's Brief, with record references -- most particularly, in her 18-page recitation of the "Course of the Proceedings before the District Court" (Br. 12-30) and in her Point II (Br. 38-50).

Such documented litigation misconduct before the District Judge, rising to the level of fraud upon the court, is entirely undenied and undisputed by Mr. Weinstein and is, in fact, indisputable. This includes: (a) his dismissal motion which knowingly misrepresented and obliterated the material pleaded allegations of the Complaint and controlling law; (b) his Answer which was false and in bad-faith in its responses to more than 150 of the Complaint's allegations; (c) his unsubstantiated opposition to Plaintiff's summary judgment application; (d) his consistently false and misleading letters and oral advocacy; and (e) **[p. 2]** his refusal to take corrective steps, when his misconduct was evidentiarily demonstrated to him.

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[1] This Reply Brief is without prejudice to Appellant's position that Appellees' Brief is not properly before the Court for all the reasons set forth in her accompanying April 1, 1997 motion.

[2] Hereinafter referenced as "Op. Br." to indicate Appellees' Opposition Brief. Plaintiff's Appellant's Brief is herein abbreviated as "Br.", with "R-" designating the Record on Appeal.

Without more, the magnitude and extent of Mr. Weinstein's willful misconduct before the District Judge is dispositive of Plaintiff's absolute right to reversal, with severest sanctions against Defendants, their counsel, and against Mr. Weinstein personally. Consequently, Mr. Weinstein should have had the sense to slink into a dark corner, never to be heard from again -- particularly in view of his citation (Op. Br. 14) to Gentner v. Shulman, 55 F.3d 87 (2d Cir. 1995), albeit for other purposes. In that case, this Court stated (at 89):

> "A trial judge is required to take measures against unethical conduct occurring in connection with any proceeding before him. Musicus v. Westinghouse Elec. Corp, 621 F.2d 742, 744 (5th Cir. 1980). It is the duty and responsibility to disqualify counsel for unethical conduct prejudicial to counsel's adversary. Ceramco, Inc. v. Lee Pharmaceuticals, 510 F.2d 268, 271 (2d Cir. 1975).

Instead, Mr. Weinstein, whose Brief also does not deny or dispute any of the facts detailed by Appellant as to the aberrant course of the proceedings before the District Judge and that his Decision is factually dishonest and legally insupportable in every material respect (Br. 31-75) -- likewise dispositive of her absolute right to reversal, with criminal and disciplinary referral of the District Judge -- proceeds to argue for its affirmance. In so doing, Mr. Weinstein ignores the facts, as documented by the Record and presented with controlling law in Appellant's Brief. Indeed, Mr. Weinstein nowhere even refers to the Brief. Nor does he identify or address a single one of her appellate arguments[3].

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[3] Mr. Weinstein's Brief refers only to Plaintiff's Record on Appeal, which he calls an "Appendix" (Op. Br. 2). Upon examination of the District Court docket, Plaintiff has learned that omitted from her Record on Appeal was the District Judge's so-ordered September 13, 1995 letter of Mr. Weinstein [R-711], which was never sent to her and of whose existence she was unaware. That letter -- and Plaintiff's response to it -- is described at pp. 19-20 of her Brief. It is unknown whether the District Judge's so-ordering of Mr. Weinstein's letter on September 19, 1995 was before or after Plaintiff telephoned the District Judge's Clerk that morning to apprise the Court

[p. 3] As hereinafter shown, Mr. Weinstein repeats on this appeal the identical pattern of his misconduct before the District Judge: falsifying, obfuscating, and omitting the material allegations of the Complaint, the nature and content of the submissions before the District Judge, and the controlling law relative thereto to mislead and deceive the Court.

Such appellate misconduct by Mr. Weinstein, making a mockery of the ABA Model Rules of Professional Conduct: Rule 3.1 "Meritorious Claims and Contentions" and Rule 3.3 "Candor Toward the Tribunal", is all the more egregious when committed by a government attorney, particularly in a case involving readily-verifiable corruption by state officials, including high-ranking state judges. Yet, Mr. Weinstein's appellate misconduct is not his alone, but is also chargeable to his superiors and the Attorney General. They were on notice both before and after Appellant filed her Brief that there was no legitimate defense to this appeal and that the Attorney General's duty was not only not to oppose the appeal, but to affirmatively join in it, as well as to undertake a Rule 60(b)(3) motion to vacate for "fraud..., misrepresentation, and other misconduct" of Defendants by their counsel -- their own Assistant Attorney General Weinstein.

Appellant gave such notice at the November 8, 1996 Pre-Argument Conference, which Mr. Weinstein failed and refused to attend, with the Attorney General's office claiming he was not handling the appeal and **[p. 4]** sending in his stead an assistant attorney general who knew nothing about the case. Appellant reiterated that notice in a January 14, 1997 letter to Attorney General Vacco, a copy of which she thereafter provided to the Chief of the Attorney General's Litigation Bureau. Notice was also encompassed in Appellant's two applications for sanctions against Mr. Weinstein

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that her September 18, 1995 opposition letter [R-712] was en route. However, the hostile and intimidating response of the Clerk, as recounted by Plaintiff's September 19, 1995 letter to the District Judge [R-728], should be seen in the context of his so-ordering Mr. Weinstein's September 13, 1995 letter. As reflected by the transcript of the proceedings on September 26, 1996, the District Judge made no mention of his so-ordering Mr. Weinstein's letter, notwithstanding that letter was discussed and handed up to him [R-682].

and the Attorney General's office for subverting the appellate case management process, whose salutary purpose is to narrow, if not eliminate, the issues on appeal. The Attorney General simply turned his back on his duty to ensure the integrity of his office's conduct in these federal proceedings -- much as his predecessor turned his back when his office subverted the integrity of Appellant's state court Article 78 proceeding by its fraudulent defense [R-70-83: ¶¶166-170, 173-178, 182-191, 195-196, 198-209. As the Complaint reflects [R-27: ¶10], it is the Attorney General's misconduct in the Article 78 proceeding which has resulted in his being named a party defendant herein.

It would seem obvious that the fact that the Attorney General is himself a party defendant is a factor preventing his office from professionally and ethically conducting itself at every stage of these federal proceedings: (1) before the District Judge; (2) in the appellate case management phase before Staff Counsel; (3) and now before this Court. Yet, Mr. Weinstein and the Attorney General's office have consistently refused to confront the issue of the propriety of the Attorney General's representing the Defendants herein, notwithstanding the Attorney General and his Assistants would be called as necessary witnesses to events relating to its defense of Appellant's Article 78 proceedings. As cited in Ceramco, Inc. v. Lee Pharmaceuticals, supra, at 270, Canon 5 of the Code of Professional Responsibility, DR 5-101(B) states:

> "A lawyer shall not accept employment in contemplated or pending [p. 5] litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness..."

The four enumerated exceptions to DR 5-101(B) are inapplicable. This includes DR 5-101(B)(4) relating to the hardship created by the refusal because of "the distinctive value of the lawyer or his firm as counsel". As the record herein overwhelmingly demonstrates, the only "distinctive value" of the Attorney General's representation of Defendants has been his readiness -- and that of his staff -- at every juncture to engage in outright fraud, misrepresentation, and other misconduct -- with impunity.

...

[p. 32] **CONCLUSION**

The Judgment below must be reversed. Moreover, if the obligations of an attorney, as an "officer of the court" are to mean anything, severest monetary and disciplinary sanctions must be imposed upon Mr. Weinstein, the New York State Attorney General, and the mostly lawyer state Defendants. Appellees' opposing Brief is knowingly and deliberately false and misleading in every material respect. As such, it all the more entitles Appellant to the full relief sought by her Brief.

¶¶30-36, 52-59 OF PETITIONER'S APRIL 1, 1997 RECUSAL /SANCTIONS MOTION, filed in the Second Circuit, April 1, 1997

...

MR. WEINSTEIN'S *PRO HAEC VICE MOTION REQUEST IS FACIALLY AND SUBSTANTIVELY DEFICIENT*

...

30. In seeking admission pro hac vice (Exhibit "B") so that he can orally argue this appeal, Mr. Weinstein implicitly concedes that he cannot meet the minimal requirements for admission to the Second Circuit. Quite apart from the three requisites set forth in Local Rule 46(a), Subsection (b) calls for "the filing required by F.R.A.P. 46". This includes an oath or affirmation, whose text is set forth therein. It reads as follows:

> "I,_____ , do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States."

31. Local Rule 46(d) provides that "in exceptional circumstances an attorney may be admitted to argue an appeal pro hac vice". However, Mr. Weinstein's "Affidavit" fails to identify a single "exceptional circumstance" to warrant his being accorded the privilege of argument herein. The Court can take judicial notice that the New York State Attorney General has available a substantial number of Assistants who are members of the bar of this Court and, indeed, who argue with regularity before it. It would empty the meaning from the requirement of "exceptional circumstances" to accord such privilege to Mr. Weinstein, without the slightest showing or even claim thereof in his "Affidavit". It may be noted that one of the differences between his original Appellees' Brief and his Corrected Brief is that the Corrected Brief includes on its cover the name of Assistant Solicitor General Thomas D. Hughes (Exhibit "C", aff. pp. 1-2). Presumably, Mr. Hughes is a member of this Court's bar and able to argue the appeal on which his name appears.

32. Moreover, adding to the facial deficiency of Mr. Weinstein's "Affidavit" (Exhibit "B") -- in and of itself sufficient to vitiate his application -- is that it fails to contain the above-quoted requisite oath of good behavior and fidelity to law and the Constitution. Nothing in this Court's Local Rules suggests that such fundamental oath is not required of attorneys seeking admission pro hac vice, whose inferior qualifications should, if anything, require such oath all the more.

33. In Mr. Weinstein's case, this oath is not a formality, but a pledge of good conduct, which he cannot make because he has not demeaned himself "uprightly" before this Court. On the contrary, he has already repeatedly violated the most elementary standards of behavior so as to cover-up and protect the unlawful and criminally corrupt actions of his clients, the gravamen of my §1983 civil rights action. My February 24, 1997 Affidavit (Exhibit "D", ¶¶12-32) details this fact: Mr. Weinstein, in tandem with the Attorney General's office, has knowingly and deliberately subverted the appellate case management phase. They did this, inter alia, by violating Staff Counsel's October 23, 1996 Order[11], which required attendance at the November 8, 1996 Pre-Argument Conference by "the attorneys in charge of the appeal", with "full authority to settle or otherwise dispose of the appeal", able to "discuss and evaluate seriously the legal merit of each issue on appeal" and "prepared to narrow, eliminate, or clarify issues on appeal when appropriate". Mr. Weinstein, who handled the defense case before the District Judge, was such attorney, but did not appear at the Conference -- based on a fraudulent representation by the Attorney General's office that he was not handling the appeal. In his stead, the office sent an Assistant Attorney General, who knew nothing the case, stating that it had only been assigned to her the night before, who could not discuss the appellate issues, could not answer Staff Counsel Bass' incisive questions, and who was unable to enter into any stipulations, no matter how minimal or legally called for. Mr. Weinstein thereafter

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[11] The October 23, 1996 Order is Exhibit "A" to my February 24, 1997 Affidavit (Exhibit "D" herein).

returned to the scene and, without explanation, refused to address the various stipulations discussed at the Conference. His open emergence as the attorney handling the appeal occurred after I wrote my January 14, 1997 letter to Attorney General Vacco and contacted Ron Turbin, Chief of the Attorney General's Litigation Bureau[12], notifying them that the nature and extent of Mr. Weinstein's misconduct before the District Judge rendered any defense of the appeal frivolous and sanctionable and that they were ethically required to take affirmative corrective steps, including joining in the appeal and a Rule 60(b)(3) motion. Attorney Vacco never responded to my January 14, 1997 letter and the response of Mr. Turbin was to express his view that Mr. Weinstein was doing a "good job". Mr. Turbin refused to provide me with the name of Mr. Weinstein's immediate supervisor, who he assured me was reviewing Mr. Weinstein's work product.

34. Because the misconduct of Mr. Weinstein and the Attorney General's office in the appellate case management stage -- as meticulously detailed and documented by my February 24, 1997 Affidavit (Exhibit "D") -- was not even adverted to by Staff Counsel Bass, let alone adjudicated in his February 25, 1997 Order (Exhibit "F"), it became a virtual "green light" for their continued misconduct in connection with their Appellees' Brief, corrected and uncorrected. Mr. Weinstein not only failed to serve me a copy of his March 4 1997 motion (Exhibit "B"), but his Appellees' Brief is, from beginning to end, knowingly false and misleading in every material respect. As highlighted by my Reply Brief, his Brief repeats on appeal the egregious misconduct that had characterized his defense before the District Judge: misrepresenting the Complaint and the law relative thereto.

35. Such appellate misconduct not only flagrantly violates ethical rules (ABA Model Rules of Professional Conduct: Rule 3.1 "Meritorious Claims and Contentions", Rule 3.3 "Candor Toward the Tribunal) and Fed.R.Civ.P. Rule 11, but rises to a level of fraud and

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[12] This includes a January 27, 1997 fax to Mr Turbin, which is annexed as Exhibit "E" to my February 24, 1997 Affidavit (Exhibit "D" herein).

obstruction of justice, warranting criminal, as well as disciplinary referral, pursuant to F.R.A.P. Rule 46(c). Such Rule expressly states:

> "A court of appeals may, after reasonable notice and opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming to a member of the bar and for failure to comply with these rules or any rule of the court."

36. In the context of F.R.A.P. Rule 46(c), which provides for a hearing before discipline is imposed by the Second Circuit, it deserves note that among Mr. Weinstein's frivolous arguments on appeal, for which he provides no legal authority, is that an attorney, such as myself, who controverted the basis for which her suspension was sought, could be suspended by the Second Department without a pre-suspension hearing and thereafter be denied a post-suspension hearing, but that this would, nonetheless, constitute a "full and fair opportunity to litigate" (Op. Br. 19-20).

...

MR. WEINSTEIN'S EXTENSION MOTION IS FACIALLY AND SUBSTANTIVELY DEFICIENT, THERE BEING NO GOOD CAUSE SHOWN

...

C. **Time-Consuming Internal Review Process:**

52. As to Mr. Weinstein's claim that he needed an extension because of an alleged "time-consuming" review process involving his "superior and...two other attorneys from the Solicitor General's office", the demonstrably frivolous and fraudulent nature of his Appellees' Brief requires him, as part of his "good faith" showing, to identify, with specificity, the particulars of that review process. This includes the names of the individuals involved, the nature, extent, and time spent on such review, and, specifically, information as to what steps were taken by the Attorney General's office in light of information received through Assistant Attorney General Alpha

Sanghvi, who attended the November 8, 1996 Pre-Argument Conference in the absence of Mr. Weinstein and following its receipt of my January 14, 1997 letter to Attorney General Vacco, thereafter, sent to Ron Turbin, Litigation Bureau Chief.

53. As my February 24, 1997 Affidavit states (Exhibit "D", ¶¶17-21), I received no response whatever from the Attorney General's office following either the November 8, 1996 Pre-Argument Conference or my January 14, 1997 letter. Mr. Turbin refused to identify Mr. Weinstein's immediate supervisor and did not return my daughter's subsequent phone message requesting such information and an opportunity to discuss the particulars of the various stipulations discussed at the Pre-Argument Conference.

54. I would add that on Friday, March 21, 1997, my daughter telephoned Mr. Thomas Hughes, the Assistant Solicitor General, whose name appears on the cover of Mr. Weinstein's corrected Appellees' Brief (although, significantly, not on the original Brief (Exhibit "C", pp. 1-2)). My daughter reported to me that Mr. Hughes initially did not express familiarity with the appeal and that she spent a great deal of time reviewing with him what had taken place in the appellate case management phase. She urged him to obtain a copy of the Brief and Record on Appeal, which Mr. Hughes refused to confirm or deny having reviewed before his name was placed on the cover of Mr. Weinstein's corrected Appellees' Brief. Mr. Hughes was unable to shed any light on the "review process" -- which, plainly, had not involved him -- or to answer my daughter's question as to the identity of Mr. Weinstein's immediate supervisor. Like Mr. Turbin, Mr. Hughes professed confidence in Mr. Weinstein and, like him, was unfamiliar with his professional and ethical duty to verify, in the face of notice, that his "confidence" was misplaced. Mr. Hughes took the position that it was for the Court, rather than himself, to examine the misconduct and fraud issues relative to the Appellees' Brief on which his name appears. He did, however, request that my daughter follow-up by sending him something in writing -- and she told him that she would provide him with a copy of this motion and the Reply Brief (then in draft).

55. The litigation misconduct of Mr. Weinstein and of the Attorney General's office in the proceedings before the District Judge in this appellate case management stage and by its Appellees' Brief supports my view that the Attorney General, a party Defendant herein -- and liable herein -- should be disqualified from representation of his state co-Defendants on conflict of interest grounds. As the record shows, he is more interested in fraudulently covering up than in exposing the true facts as to the horrendous civil rights violations that have been perpetrated against me. This includes the Second Department's retaliatory suspension of my law license without charges, without reasons, without findings, without a pre- or post-suspension hearing, denying all appellate review and subverting my Article 78 proceeding against it by refusing to recuse itself -- a proceeding in which it was defended by the Attorney General, who, without any legal authority, argued to the Second Department that it was not required to recuse itself. Its legally insufficient, documentably perjurious dismissal motion was then shamelessly granted by the Second Department [R-70-83: ¶¶166-170, 173-178, 182-191, 195-196, 198-209].

56. As my §1983 Complaint [R-27, ¶10] and my January 14, 1997 letter to Attorney General Vacco reflect, it is the Attorney General's misconduct in that proceeding that is the basis of its liability herein. Moreover, as pointed out by my Reply (pp.), after allowing the Second Department, his judicial client, to grant its own dismissal motion in my Article 78 proceeding against it, the Attorney General went on to oppose appellate review of his misconduct and that of his clients when I sought to appeal the dismissal to the New York Court of Appeals and, thereafter, to the U.S. Supreme Court. The office of the Solicitor General, whose name appears on the Opposing Brief to the Supreme Court [R-442], is implicated in its misconduct by wrongfully blocking appellate review of that travesty of justice, which not only trashed the most fundamental rules of judicial disqualification "that no man shall be judge of his own cause", Spencer v. Lapsley, 61 U.S. 264 (1858); In re Murchison, 349 U.S. 623 (1955); Canon 3(c) of the Code of Judicial Conduct; 103.3(c) of the Rules Governing Judicial Conduct, but which its clients, by its own case law, were without jurisdiction even to adjudicate, Colin v. Appellate Division,

First Department, 3 A.D.2d 682, 159 N.Y.S.2d 99 (2d Dept. 1957), citing Smith v. Whitney, 116 U.S. 167 (1986).

57. In Ceramico, Inc. v. Lee Pharmaceuticals, 510 F.2d 268, 271 (1975), this Circuit, citing cases, stated: "the courts have not only the supervisory power, but also the duty and responsibility to disqualify counsel for unethical conduct prejudicial to his adversaries." The unethical conduct of the Attorney General's office makes manifest the need for exercise of this Court's "supervisory power" and its duty to disqualify the Attorney General's office.

58. In the case at bar, the Attorney General has multiple conflicts: (a) his conflict of interest in representing himself as a party herein with personal interests differing from his public duty; (b) his conflict of interest in representing multiple clients with differing interests; and (c) his conflict of interest in representing the Appellees in both their official and personal capacities. In each of these situations, the actual and potential conflict with the Attorney General's professional independence imposes proscribed limitations on his representation herein as to each client co-Defendant. See ABA Model Rules, Rule 1.7(a); N.Y. Code of Professional Responsibility, Canon 5 ("A lawyer should exercise independent judgment on behalf of a client") EC 5-14, 15; DR 5-101 ("Refusing Employment When the Interests of the Lawyer May Impair His Independent Judgment"); See also DR-5-101C relating to lawyer as witness.

59. Since the question of the Attorney General's conflict of interest was raised at the November 8, 1996 Pre-Argument Conference -- indeed, by Staff Counsel Bass himself (Exhibit "D", ¶15) -- it should be encompassed in the Show Cause Order herein requested. This is appropriate in light of the Attorney General's refusal to address all issues arising out of the Conference.

¶¶1-2 OF PETITIONER'S APRIL 23, 1997 AFFIDAVIT IN REPLY AND IN FURTHER SUPPORT OF HER RECUSAL/SANCTIONS MOTION, filed in the Second Circuit, April 23, 1997

...

1. This Affidavit is submitted in reply to Mr. Weinstein's purported opposition to my 27-page April 1, 1997 motion. Such opposition, consisting of a frivolous 6-paragraph opposing Affidavit and a 6-page Memorandum of Law, wherein Mr. Weinstein makes knowingly false representations that he does not make in his sworn Affidavit, reinforces that Mr. Weinstein is not only unworthy of pro hac vice admission to this Court, as explicitly detailed in my motion (pp. 13-18), but that immediate steps must be taken to remove him as a member of the bar and a Show Cause Order issued against the Attorney General's office for sanctions, including contempt, for its acquiescence and complicity in a pattern of unrestrained defense misconduct that has infected the appellate phase of this litigation, much as it previously infected the proceedings in the district court (Br. 12-30, Point II: 38-50).

2. Although Assistant Solicitor General Thomas Hughes was served with a copy of my subject April 1, 1997 motion and my simultaneously filed Rely Brief, he has not submitted any opposing affidavit. This, notwithstanding two pivotal paragraphs of my moving Affidavit directly concerned him, ¶31 and ¶54. In ¶31, I opined that Mr. Hughes, whose name had been added to the cover of Mr. Weinstein's corrected Appellees' Brief, "[p]resumably,...is a member of this Court's bar and able to argue the appeal on which his name appears" -- further establishing the absence of "exceptional circumstances" required under Local Rule 46(d) before pro hac vice admission could be accorded Mr. Weinstein. In ¶54, I recounted Mr. Hughes' view of his professional and ethical duty when put on notice of misconduct by Mr. Weinstein and the Attorney General's office: "that it was for the Court, rather than himself to examine the misconduct and fraud issues relate to the Appellees' Brief on which his name appears." It would seem that Mr. Hughes, whose name now conspicuously does not appear on the cover of Mr. Weinstein's Memorandum of Law, continues to hold to such position -- even after

citation in my Reply Brief (p. 3) to ABA Model Rules of Professional Conduct: Rule 3.1 "Meritorious Claims and Contentions" and Rule 3.3 "Candor Toward the Tribunal"[1].

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[1] See also footnote 25 of my Appellant's Brief (p. 42).

¶¶ 6-9 OF PETITIONER'S APRIL 28, 1998 SUPPLEMENTAL AFFIDAVIT IN SUPPORT OF HER RECUSAL/SANCTIONS MOTION, filed in the Second Circuit, April 28, 1998

B. Recent Court Decisions Further Support My Entitlement to a Show Cause Order Against the Attorney General's Office for Contempt and Sanctions

6. On April 24, 1997, a front-page article in the New York Law Journal (Exhibit "C") described the recent report of Southern District Magistrate Judge Theodore H. Katz in McClain v. Lord, 95 Civ. 4918, who found an Assistant Attorney General's conduct in repeatedly missing filing deadlines and violating court orders so professionally unacceptable that he recommended that a $150,000 default judgment be entered against the state -- which was accepted by Judge Leisure. The Law Journal also noted that Judge Katz' report had cited decisions by other judges criticizing the Attorney' office for failing to comply with deadlines and court orders[2].

7. According to the Law Journal, a spokesman for Attorney General Vacco characterized the conduct of the Assistant Attorney General in that case as "disturbing and absolutely unacceptable to this office", but claimed that the Assistant Attorney General's superiors had been "unaware" of it and that "other attorneys criticized in recent rulings have been fired or counseled..." (Exhibit "C").

8. My instant motion (p. 3,¶4; p. 27, "WHEREFORE", #7) expressly seeks a Show Cause Order against the Attorney General for his knowing complicity in a long-history of misconduct, rising to outright criminality, by Assistant Attorney General Weinstein. By leaps and bounds, this misconduct is more serious than anything

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[2] Footnote 28 to my Appellant's Brief (p. 47) refers to and quotes from the decision of District Court Judge Denise Cote in Pearson v. Coughlin, as reported in the New York Law Journal, 8/3/95, p. 3 "Failure to Monitor Assistant Attorney General".

reported to date about missed deadlines and other missteps of Assistant Attorneys General, which, moreover, to my knowledge, has never implicated supervisory personnel at the Attorney General's office and certainly not the Attorney General himself -- as is the case at bar. As detailed by my motion, Mr. Weinstein's fraud, misrepresentation, and other misconduct on the district court level, in the appellate case management phase, as well as before this Court, has been repeatedly brought to the attention of his superiors -- including Attorney General Vacco himself. Their response has been one of inaction, dereliction, and denial, not only allowing Mr. Weinstein to engage in further misconduct, but claiming that they are "very satisfied" with him (my 2/24/95 Aff. ¶20). As noted in ¶2 of my Reply Brief, the view of Assistant Solicitor General Thomas Hughes is that this Court will decide the matter of Mr. Weinstein's misconduct and that, therefore, he has no obligation to take corrective steps.

9. The litany of decisions by district judges of this Circuit condemning the derelictions of the office of the Attorney General leave no doubt as to what must be the severity of this Circuit's response to the record herein of its flagrant misconduct and fraud -- all undenied, undisputed, and uncontroverted.

LETTER OF THE CENTER FOR JUDICIAL ACCOUNTABILITY, INC. (BY ITS COORDINATOR, ELENA RUTH SASSOWER) TO JEFFREY N. BARR, ASSISTANT GENERAL COUNSEL, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, DATED NOVEMBER 24, 1997, TRANSMITTING THE RECORD

By Fax and Mail
202-273-1108

November 24, 1997

Jeffrey N. Barr, Assistant General Counsel
Administrative Office of the United States Courts
One Columbus Circle
Washington, D.C. 20005

RE: Remedies within the federal judiciary to restrain and punish on-the-bench misconduct by federal judges violative of recusal statutes and codes of judicial conduct

Dear Mr. Barr:

This letter follows up our several telephone conversations about *Sassower v. Mangano, et al.* (2nd Cir. #96-7805) -- as far back as January or February of this year. Pursuant thereto, and most particularly our lengthy conversation on November 4th, I finally duplicated and assembled the appellate papers and, on Wednesday, November 19th, mailed them to you (Certified Mail # P-543-172-747). As of Friday, November 21st, when we spoke, they had not arrived.

Presumably, these appellate papers will reach you today. "Clear the decks"! -- they are substantial. To assist you, the papers are divided into three separate packages, each with its own inventory. The three inventories are separately entitled "THE APPEAL", "APPELLATE CASE MANAGEMENT PHASE", and "POST-APPEAL

PROCEEDINGS". A cumulative inventory is annexed hereto as Exhibit "A".

Because the federal judiciary has a budget of approximately $3,000,000,000 -- including to fund the Judicial Conference of the United States, the Administrative Office of the United States Courts, and the Federal Judicial Center with ample staff and state-of-the-art equipment on site -- you may not appreciate how costly and time-consuming it was for our non-profit citizens' organization to reproduce and assemble these appellate papers. We have gone to this expense and effort to enable you, as Assistant General Counsel of the Administrative Office, to earn the salary which the taxpayers of this country pay you in the belief that you will be true to the obligations required of *every* lawyer under ethical and professional codes. These include your obligations as "an officer of the legal system **[p. 2]** and a public citizen", reflected by the Preamble to the ABA Model Rules of Professional Conduct, and specifically, Rule 8.3(b), requiring that:

> "A lawyer having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority".

Following your review of the transmitted documentation -- which should fully satisfy your olfactory sense that the serious allegations herein do not "smell unsupported" (*Cf.* your response last year, as recounted in our September 20, 1996 letter to you) -- we expect you to channel these materials to the appropriate persons, committees, and offices in the federal judiciary[1] so that they may take necessary steps

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[1] The 1993 Report of the National Commission on Judicial Discipline and Removal -- both Final (at pp. 126-7) and Draft (at pp. 128-129) -- noted "the current dispersion of authority regarding judicial ethics and judicial misconduct and disability among a variety of Conference committees and the lack of any group responsible for coordinating the collection and analysis of relevant data and the development of policy proposals." Without making a specific recommendation, it suggested that "the judiciary would be well served by a standing committee of the Judial Conference to

to protect the "administration of justice", all but destroyed by a district judge and, thereafter, by Second Circuit appellate judges. *Sassower v. Mangano* establishes -- by a breath-taking paper trail -- the corruption of the judicial process by two levels of the federal judiciary, which have flouted federal disqualification statutes and the Judicial Conference's own Code of Judicial Conduct, based on the ABA Code -- as if they do not exist. The judges' dishonest and fraudulent decision/orders are a manifestation of this.

During its brief tenure, the National Commission on Judicial Discipline and Removal was too busy touting the quality and integrity of the federal judiciary to examine this kind of empirical evidence. As you know, the National Commission never even identified dishonest decisions as a form of judicial misconduct[2] and blithely ignored the case evidence we provided it: the appellate papers in *Sassower* **[p. 3]** *v. Field, et al.* (2nd Cir. #91-7891). Like this case, *Sassower v. Field* documented the utter perversion of the judicial process by two levels of the federal judiciary in the Second Circuit, culminating in dishonest and fraudulent decisions. It additionally demonstrated the Supreme Court's failure to meet its supervisory responsibilities following the Second Circuit's denial of our Petition for Rehearing with Suggestion for Rehearing *En Banc*.

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monitor and periodically evaluate experience under the 1980 Act and other formal and informal mechanisms for dealing with problems of judicial misconduct and disability" and raised the possibility that the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders be given a "broader charge" and its membership expanded. What -- if anything -- has the Judicial Conference done in this regard?

[2] This was pointed out in my November 28, 1995 testimony before the Second Circuit's Task Force on Gender, Racial, and Ethnic Fairness in the Courts -- a copy of which was sent you under a December 1, 1995 coverletter. (*See* Exhibit "A", p. 2 of Doris L. Sassower's April 28, 1997 Supplemental Affidavit. APPELLATE CASE MANAGEMENT: Doc. 5). The Second Circuit's Task Force's Draft Report, issued last June, ignored the issues presented by my testimony and that of my co-presenter, Doris L. Sassower [R-890-900] -- issues devoted to the inadequacy of mechanisms within the federal judiciary to address bias and misconduct by federal judges: §372(c), appellate review, recusal, and writs of mandamus.

At present, *Sassower v. Mangano* is pending before the Second Circuit on a Petition for Rehearing with Suggestion for Rehearing *In Banc*, challenging the Circuit to confront the National Commission's judicially-self-serving conclusions as to the efficacy of appellate review and "peer disapproval" as "fundamental checks" of judicial misconduct. Moreover, because the Petition incorporates our §372(c) complaints against the district judge and three-judge appellate panel, it requires the Circuit to grapple with the "Achilles heel" issues dodged by the National Commission in evaluating the 1980 Act: the definition of "merits-relatedness" in the context of complaints alleging biased, bad-faith, judicial conduct motivated by illicit purposes and the relationship between disciplinary review and "normal adjudicative procedures".

Whereas the Federal Rules of Appellate Procedure do not require a Circuit to give reasons when it denies a petition for rehearing, the §372(c) statute expressly requires that a Chief Judge's dismissal of a §372(c) complaint be by "written order stating his reasons". Six years *before* the National Commission's recommendations -- thereafter endorsed by the Judicial Conference, following recommendation by its Committee to Review Circuit Council Conduct and Disability Orders -- the Commentary to Illustrative Rule 4 of the Special Committee of the Conference of Chief Judges of the United States Court of Appeals advised that such dismissal orders should provide the complainant with a "relatively expansive explanation" and called upon the Circuits to create a body of case-law precedent relative to the disposition of §372(c) complaints. This, likewise, was endorsed by the Judicial Conference following Committee approval. [For citations, *see* Exhibit "E", p. 1 to Doris L. Sassower's October 10, 1997 recusal/vacatur for fraud motion: POST APPELLATE PROCEEDINGS: Doc. 2].

Of course, these recommendations -- designed to maintain the integrity of the §372(c) process and create public confidence in the judiciary's claim that it can police its own -- mean nothing to the Second Circuit. We demonstrated this last year when we filed our §372(c) complaint against then Chief Judge Jon Newman (#96-8511) for his dishonest and fraudulent decision in *Sassower v. Field*. Without the requisite explication, Acting Chief Judge Amalya Kearse

dismissed that fully-documented complaint as "merits related" and "unsupported" -- a dishonest dismissal thereafter adhered to by the Circuit, in the face of our fully-documented petition for rehearing. By coverletter dated June [p. 4] 7, 1996, we sent you a copy of the file of that §372(c) complaint, requesting that it be presented to the Judicial Conference's Committee to Review Circuit Council Conduct and Disability Orders, to which you are staff liaison. We reiterated this request in our September 20, 1996 letter and, thereafter, in at least two phone calls. Yet, you failed and refused to present it -- as recounted in my article "*Without Merit: The Empty Promise of Judicial Discipline*" in the current issue of The Long Term View[3] -- the pertinent portion of which I read to you during our November 4th phone conversation -- and, thereafter, faxed (Exhibit "B").

Although §372(c) complaints are not "judicially reviewable on appeal or otherwise" [§372(c)(10)], our instant §372(c) complaints against the district judge and three-judge appellate panel in *Sassower v. Mangano* will be judicially reviewable in the U.S. Supreme Court. This is because they are incorporated in our Petition for Rehearing, as well as in our post-appeal recusal/vacatur for fraud motion. You may expect them to be focally presented in our cert petition to the Supreme Court in the event the Second Circuit denies rehearing and dismisses, without investigation, our fully-documented §372(c) complaints. Such cert petition will highlight the Supreme Court's supervisory function -- which is all the greater when the Circuits are subverting *both* the appellate process and disciplinary mechanism by fraudulent decisions. Moreover, since the Circuits have demonstrated their disinclination to resolve the issues of "merits-relatedness" and the interplay between appellate and disciplinary remedies by their failure to publish a body of interpretive dismissal orders, we will call upon the Supreme Court to give its "authoritative" voice so as to reinvigorate the §372(c) mechanism.

As discussed, should the Supreme Court deny our cert petition and thereby fail to address the profound judicial misconduct/corruption

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[3] Massachusetts School of Law, Vol. 4. No. 1 (summer 1997).

issues presented by *Sassower v. Mangano*, it will only reinforce that the federal judiciary's commitment to disciplining its own is a self-promoting appearance *devoid* of substantive reality. You may be certain that such fact will not be lost on the House Judiciary Committee. Indeed, the extraordinary record of *Sassower v. Mangano* will eclipse even that of *Sassower v. Field* -- heretofore the "star" case for our upcoming presentation to the House Judiciary Committee.

Assuredly -- and because of the unique posture of *Sassower v. Mangano*, SIMULTANEOUSLY embracing both disciplinary and appellate remedies -- the House Judiciary Committee will be particularly interested in a response from the costly "superstructure" of the federal judiciary's bureaucracy: the Judicial Conference, the Administrative Office, and the Federal Judicial Center. Our view, however, is that if this superstructure -- which operates in Congress as a vigorous judicial lobby **[p. 5]** -- pressing for judicial salary increases and for statutory immunities, blocking recusal remedies[4], and urging judicial control over judicial discipline -- has anything to say about the Second Circuit's disregard for disqualification statutes and its destruction of the judicial process, as demonstrated by *Sassower v. Mangano*, it should say it NOW in the context of ethically-mandated action.

Lest the Judicial Conference be inclined to "lay low" and do nothing -- much as it did nothing in response to our document-supported testimony before its Long Range Planning Committee on December 9, 1994 -- a copy of which we transmitted to you under our July 20, 1995 letter -- we would remind its judges that they are not only bound by Rule 8.3(b) of the ABA Model Code of Professional Conduct, but

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[4] The enclosed item from the May 16, 1997 *New York Law Journal* (Exhibit "C") is an illustrative example of the kinds of issues about which the Judicial Conference testifies before Congress. We would appreciate a copy of the testimony referred to therein -- which would appear to be quite relevant to the issues presented by our §372(c) complaints, both present and past.

by Canon 3B(3) of its *own* Code of Judicial Conduct[5]:

> "A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer".

These important reporting obligations should have been -- but were not -- highlighted or even remarked upon by the National Commission.

The record in *Sassower v. Mangano* is replete with clear, uncontroverted, and incontrovertible evidence establishing outright fraud by federal judges, as well as by the mostly lawyer defendants, including state judges and the New York State Attorney General sued for public corruption. Should there be the slightest doubt as to the Judicial Conference's duty under the circumstances to "initiate appropriate action", including referral of the involved federal judges for investigation either by the House Judiciary Committee or the Justice Department's Public Integrity Section of its Criminal Division, we request that it turn to its Committee on Codes of Conduct for an advisory opinion. Fortunately, you are also liaison to that Committee.

What is here at issue is *not* the judicial independence of the Second Circuit judiciary -- but willful abuse of that independence for the ulterior purposes particularized in the Petition for Rehearing with Suggestion for Rehearing *In Banc* and in the §372(c) complaints. If -- notwithstanding the statutory grant of authority to the Judicial Conference under 28 U.S.C. §331, empowering it to "prescribe and modify rules for the exercise of the authority provided in section 372(c)", with "all judicial officers and employees of the United States" required to "promptly carry into effect all [its] orders" -- the [p. 6] Conference believes itself "powerless" to take action based on THIS RECORD, it should, pursuant to that statute, "submit to Congress...its recommendations for [enabling] legislation". If it believes that the

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[5] *See also*, Canon 3D the ABA Code of Judicial Conduct.

only recourse within the federal judiciary is by appeal, e.g. appeal to the U.S. Supreme Court, we ask for a written statement to that effect – including its own endorsement of Supreme Court review so that the profound issues relating to judicial independence and accountability may be addressed by the judicial branch *before* they are addressed by Congress. In the event there is another route by which the Judicial Conference, headed by the Chief Justice of the Supreme Court, can alert the Supreme Court to the imperative to accept review of this important "case in controversy", we ask that it do so. You indicated that there is no equivalent of the certification provision of 28 U.S.C. §1254(2), applicable to the Circuits. We, therefore, request that, pursuant to 28 U.S.C. §331, the Judicial Conference make a legislative recommendation to Congress for such statutory authority when confronted with a "case in controversy" of this nature.

Sassower v. Mangano demonstrates that if Congress' purpose of ensuring the fairness and impartiality of federal judges is to be met, legislative changes must be made in the recusal statutes, 28 U.S.C. §§144 and 455(a), as well as in the statute creating the federal judicial disciplinary mechanism, 28 U.S.C. §372(c). Indeed, one of the National Commission's important recommendations -- although not highlighted in bold type -- was in a paragraph that read as follows:

> "In light of the indeterminacy of the Act's core substantive conduct standard – 'conduct prejudicial to the effective and expeditious administration of the business of the courts ' -- it was to be expected that chief judges and circuit councils would seek more concrete guidance in the Code of Conduct. They have done so **frequently** in dispositions under the Act [emphasis added][6]. Yet, the Code was not intended as

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[6] Is this yet another instance of the dishonesty of the National Commission's Report? This claimed frequency with which the federal judiciary relies upon the Code of Judicial Conduct, appearing in *both* the Commission's Final and Draft Reports, diametrically *contradicts* your own underlying consultants' study, "*Judicial Discipline: Administration of the 1980 Act*". You found that: "**Only 13 (3%)** of the chief judges' orders we sampled have cited the Code of Judicial Conduct. By way of

> a source of disciplinary rules, and not all of its provisions are appropriately regarded as enforceable under the Act. The same may be true of other statutes and rules establishing ethical norms for federal judges, particularly if they have their own enforcement mechanisms. The Commission believes the subject deserves continuing **[p. 7]** study and clarification, much of which can be expected to emerge on a case by case basis if dispositions under the Act are circulated and selectively published. The Commission can also see room for fruitful study of various committees of the Judicial Conference charged with responsibility for ethics and discipline issues, and perhaps by appropriate congressional oversight committees." Final Report of the National Commission on Judicial Discipline and Removal, pp. 98-99.

Obviously, included among the "other statutes...establishing ethical norms" with "their own enforcement mechanisms" are 28 U.S.C.§§144 and 455(a), whose enforcement is by way of motion practice and appeal or by a petition for mandamus. *Sassower v. Mangano* resoundingly proves the worthlessness of these statutes and their illusory "enforcing mechanisms"[7] -- apart from enforcement

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comparison, 34 (7.5%) of the complaints we sampled cited the code...**None** of the chief judges we spoke to had **ever** had occasion to consult the Advisory Committee..." (Research Papers, Vol. I, p. 543) and "Of the 127 judicial council orders we sampled disposing of petitions for review, **only a handful** cited any authority at all. Eight cited local rules; two cited prior orders under §372(c); **one** cited the Code of Judicial Conduct; and **none** cited advisory opinions of the ethics committee." (Research Papers, Vol. I, p. 549) [emphases added].

[7] The National Commission's Report conceals the conclusions of Charles Gardiner Geyh's underlying consultant's study, "*Judicial Discipline Other than the 1980 Act*", which states: "While the text of sections 144 and 455 appear to create a relaxed standard for disqualification that would be relatively easy to satisfy, judicial construction has limited the statutes' application, so that recusal is rare, and reversal of a district court refusal to recuse, is rarer still." Research Papers, Vol. I, pp. 771. Doris L. Sassower's testimony before the Second Circuit Task Force on Gender,

under §372(c) which remains to be seen.

Considering the fact that you have told me several times -- in response to my repeated telephone inquiries -- that you would be quite surprised if there have been many published §372(c) dismissal orders from the Circuits -- the Judicial Conference could not possibly have undertaken the kind of "case by case" "fruitful study" envisioned by the National Commission. Please confirm if it has done *any* "continuing study and clarification" in the four years since the National Commission's 1993 Report-- and how many published dismissal orders exist to date beyond the 15 referred to in your consultants' study, "*Judicial Discipline: Administration of the 1980 Act*", underlying that Report (Research Papers, Vol. I, p. 544). Of course, we would also like to know whether you have located any response to former Chief Judge Patricia Wald's September 25, 1987 memo, as quoted in my article "*Without Merit: The Empty Promise of Judicial Discipline*" (Exhibit "B") -- and about which we inquired as least as far back as our October 1, 1995 letter to you[8].

[p. 8] Pursuant to the Judicial Conference's power under 28 U.S.C. §331 to "prescribe and modify rules for the exercise of the authority provided in section §372(c) of this title", we request the Conference modify Illustrative Rule 4(c) since it is not in conformity with the

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Racial, and Ethnic Bias in the Courts [R-896-898] quoted Geyh's study and referred to treatises going back more than 50 years as to how the recusal statutes have been transformed into worthlessness by reason of the judicial interpretation of them. *See also*, "*Statutory Disqualification of Federal Judges*", David C. Hjelmfelt, Kansas Law Review, Vol. 30, pp. 255-263 (1982).

[8] According to footnote 117 of the law review article "*Regulating Judicial Misconduct and Divining 'Good Behavior' for Federal Judges*", [Michigan Law Review, Vol 87: 765-96 (1989)] authored by Judge Wald's successor as Chief Judge of the Court of Appeals for the District of Columbia Circuit, Harry T. Edwards, a copy of her memo is "on file with the Michigan Law Review". From footnote 121, it would appear that the Judicial Conference has that memo, as well as memos from each of the Circuits responding to a request for their experience under the 1980 Act from 1981 through 1987. We request copies, as well as any cumulative report of the Judicial Conference based thereon.

statute -- and, likewise, modify the Second Circuit's essentially identical Rule 4(c) -- because they mandate dismissal of "merits-related" complaints, whereas such dismissal is discretionary under the §372(c) statute. To enable the Judicial Conference to better understand the consequences of the word switch from "may dismiss", which is how it appears in the statute, to "will be dismissed", which is how it is phrased in the Illustrative Rules followed by the Circuits, we ask that you provide it with our May 30, 1996 Petition for Rehearing of Acting Chief Judge Kearse's dismissal of our §372(c) complaint against then Chief Judge Newman, where we showed how such switch has enabled the federal judiciary to get out of issuing reasoned, non-conclusory dismissal orders.

Needless to say, we are excited by the Fifth Circuit's notification to you last week that it will be changing the "will" to "may" -- especially since its former Chief Judge, Charles Clark, played a pivotal role in formulating the Illustrative Rules. Please ascertain for us the background to this modification. Is it the result of some recent §372(c) complaint or a series of complaints -- and are they the subject of published orders? (Or perhaps the Fifth Circuit judges are responding to my article, e.g., p. 94 "...the statute does not actually require dismissal of 'merits-related' complaints, but only that such complaints 'may' be dismissed..." (Exhibit "B").

Last but not least, we request that the Conference examine the Second Circuit's application of its Rule 16 (which is essentially identical to Illustrative Rule 16). Not content to hermetically seal §372(c) judicial misconduct complaints filed as such, the Circuit physically removed such complaints and related materials annexed as exhibits to our recusal/vacatur for fraud motion in *Sassower v. Mangano*. (*See* p. 7 of our November 19, 1997 letter to Deputy Clerk Madsen. POST-APPEAL PROCEEDINGS: Doc. 6).

You may be assured of our complete cooperation in advancing the true "administration of justice".

Yours for a quality judiciary,
ELENA RUTH SASSOWER, Coordinator
Center for Judicial Accountability, Inc.

PETITIONER'S LETTER TO ABA PRESIDENT JEROME J. SHESTACK, DATED JANUARY 26, 1998, TRANSMITTING THE RECORD

BY FAX: 215-977-2346
BY PRIORITY MAIL: Certified Mail/RRR: Z-203-707-612

January 26, 1998

Jerome J. Shestack, President
American Bar Association
c/o Wolf, Block, Schorr & Solis-Cohen
12th Floor Packard Building
S.E. Corner 15th & Chestnut Streets
Philadelphia, Pennsylvania 19102-2678

RE: Upholding Standards of Ethics and Professionalism at the ABA

Dear Jerry:

Congratulations on taking the helm as President of the American Bar Association, a well-earned honor, for which you worked with dedication for the 25 years I have known you[1]. May you have great success in bringing all your high hopes and those of your supporters to fruition!

The ABA is in *dire* need of the kind of leadership you can provide, coming from the background you do as former Chairman of its Section on Individual Rights and Responsibilities. I was heartened by your focus on professionalism, as stated in your first message as President in the September 1997 ABA Journal. You approvingly

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[1] You may recall signing my petition back in 1976, when I entered the race to become the ABA's first woman Assembly Delegate.

quoted Roscoe Pound's classic definition of that term[2]. Among the essential components you cited were "fidelity to ethics and integrity as a meaningful commitment", "civility", and a "commitment to improve the justice system and advance the rule of law".

It was because we wanted to give you a "running start" on these issues that exactly a year ago, after the [p. 2] January 1997 ABA Journal reported ("Nourishing the Profession", at p. 52) your intention not only to make professionalism a "cornerstone" of your tenure, but to "go beyond the report" of the Professionalism Committee of the Section on Legal Education and Admission to the Bar" and "implement a comprehensive three-year plan on improving professionalism in every section and committee", that my daughter, Elena, as Coordinator of the Center for Judicial Accountability, Inc. (CJA), sent you a copy of her January 17, 1997 letter addressed to then ABA President N. Lee Cooper. That letter reported the grossly unprofessional conduct of the ABA Center for Professional Responsibility, its four constituent Standing Committees on Ethics and Professional Responsibility, Professional Discipline, Professionalism, and Lawyer Competence, as well as of its affiliated Association of Professional Responsibility Lawyers (APRL).

To these entities we had provided a copy of my February 1995 cert petition to the U.S. Supreme Court, whose single issue presented was the unconstitutionality of New York's attorney disciplinary law, as written and as applied to me. The cert petition chronicled the most heinous violation of my constitutional rights: the immediate, indefinite, and unconditional suspension of my law license, in June 1991, *without written* charges, *without* findings, *without* reasons, *without* a hearing, *without* any right of appeal, in retaliation for my *pro bono* challenge to the political manipulation of judicial elections in New York. Highlighting this retaliation was CJA's public interest ad, "*Where Do You Go When Judges Break the Law?*", published on the Op-Ed page of the October 26, 1994 New York Times and, thereafter in the New

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[2] I am a Life Fellow of the Roscoe Pound Foundation and have been one for many years.

York Law Journal (Exhibit "A-1") -- copies of which we provided to the leadership of the ABA, including of these entities. Nonetheless, despite the serious threat to the legal profession and society at large, represented by an unconstitutional attorney disciplinary law and its misuse to retaliate against a judicial whistle-blowing attorney, the leadership of these ABA entities refused to comment on the cert petition and, without explanation, refused to place it on their agendas for consideration by their membership as to appropriate steps to be taken. This, notwithstanding I followed all the prescribed procedures for ABA consideration, including for *amicus curiae* assistance before New York's highest state court and in my §1983 federal civil rights action, both challenging New York's attorney disciplinary law, as written and as applied. Nor would they place on their agendas, or otherwise address, the finding of the National Commission on Judicial Discipline and Removal as to the "widespread reluctance" of lawyers to report judicial misconduct for fear they will suffer adverse consequences and CJA's request that the ABA develop "implementing structures" to advance the National Commission's proposed solution, to wit,

> "the birth and nourishment of a culture in which the bar stands together...in defending lawyers against retaliation against vindictive judges". (p. 101, Report of the National Commission on Judicial Discipline and Removal, annexed as Exhibit "C" to Elena's February 8, 1996 memorandum).

[p. 3] Instead, the ABA entities ignored our written communications and then viciously mistreated Elena at the February and August 1996 ABA Conventions, when she sought to ascertain the status of our long-standing, unresponded-to requests for ABA consideration and assistance.

This inexcusable mistreatment of Elena was contemporaneously detailed by her February 8, 1996 memorandum, addressed to the Center for Professional Responsibility and its four constituent

committees[3], as well as by her September 18, 1996 letter, addressed to President Timothy Burke of the Association of Professional Responsibility Lawyers (APRL), also sent to the ABA entities[4]. No one denied or disputed what she particularized as having occurred at those Conventions. Copies of each were enclosed with her January 17, 1997 letter to President Cooper. Also enclosed was her January 17, 1997 memorandum addressed to the Center for Professional Responsibility and constituent committees, reiterating our call that they place on their agendas the issues highlighted by our prior correspondence.

We received *no* response from President Cooper or from you to this gravely serious correspondence, nor to the subsequent correspondence we sent both of you – a copy of my January 24, 1997 letter to Herbert Sledd, Chairman of the Fellows of the American Bar Foundation (ABF). That letter detailed the unprofessional conduct of the Bar Foundation's leadership in disregarding the vote of its membership at its 1996 Business Meeting, instructing its Research Director, Brian Garth, to review my cert petition and render a report as to the constitutional issues and the responsibility of the organized bar to take appropriate action, as well as its disregard of my subsequent communications on the subject. Indeed, the ABA's *only* response to our January 1997 correspondence, chronicling, without controversion, shameful and appalling conduct by lawyers in ABA leadership positions were two January 28, 1997 letters from the ABA's Deputy General Counsel, Catherine Daubert, which were themselves shameful and appalling. The first, addressed to Elena,

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[3] The February 8, 1996 memorandum was also sent to then ABA President Roberta Cooper Ramo and to Marna Tucker, then Chair of the Fellows of the American Bar Foundation. My daughter's March 19, 1996 coverletter to them called their attention to the failure of the ABA Center for Professional Responsibility and constituent committees to meet "even minimal standards of professional responsibility and ethics" and expressly requested their assistance. We received *no* response from them.

[4] The September 18, 1996 letter was sent to the Center for Professional Responsibility and its constituent committees under a September 20, 1996 coverletter.

informed her, without explanation, that the issues which her January 17, 1997 memorandum to the Center for Professional Responsibility and constituent committees, requested be placed on the agenda would not be and, additionally, that she would not be permitted to register for the ABA midyear Convention or attend its meetings based on her "past conduct". The second letter, addressed to me, unceremoniously informed me, without any prior notice, that my ABA membership was terminated by reason of my suspension, which it falsely characterized as [p. 3] a "final" order[5].

These two letters, as well as my responding January 28, 1997 letter to ABA Deputy General Counsel Karen Blasingame, protesting her rude and unprofessional conduct, including hanging up on both me and on my daughter when we immediately telephoned the office of ABA Counsel to try to provide it with the true facts, as substantiated by documentary proof, are annexed to my January 29, 1997 letter to Carol Murphy, the American Bar Foundation's Staff Director. You were an indicated recipient of that letter, although it may not have been distributed to you, as was requested. A copy is therefore enclosed so that you can see for yourself the disgraceful manner in which the ABA wrongfully terminated my membership and a concocted false and defamatory pretense for excluding my daughter from attendance at ABA meetings.

Since then a whole year has passed. In that entire time, no one in ABA leadership, the Fellows of the American Bar Foundation, the Center for Professional Responsibility, nor the constituent ABA committees on ethics, professional responsibility, and discipline has responded to our January 1997 correspondence. The *only* response, other than the aforesaid wrongful termination of my ABA membership and exclusion of my daughter, was a January 24, 1997 two-sentence letter from the President Burke of APRL (Exhibit "B"), enclosing that

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[5] The June 14, 1991 court order suspending my law license is an "interim" order -- a fact highlighted by my cert petition, which annexed a copy -- as well as by my ABA correspondence, including my January 24, 1997 letter to ABF Chairman Sledd.

organization's Certificate of Incorporation and By-Laws. Those documents belie the two-sentences in his previous September 25, 1996 letter[6] stating that "APRL is not in a position to pursue the matters raised in [our September 18, 1996] letter" to him. In fact, they establish precisely what that letter had alleged as to APRL's former President Ellen Pansky, to wit, that she had LIED when she claimed in her August 7, 1996 letter[7] to my daughter that APRL had "no authority to provide assistance...[or] to file *amicus* briefs." -- a position she claimed was based on review of APRL's Certificate of Incorporation and By-Laws by its Board of Directors. APRL's Board of Directors could *not* have come to such conclusion based on those documents since they give *explicit* authority to APRL to have provided assistance, including *amicus* support (Exhibit "B"). Of course, as my daughter's September 18, 1996 letter pointed out, the Director of the Center for Professional Responsibility, Jeanne Gray, had herself LIED when, in trying to pass off responsibility from the ABA to APRL for the serious issues presented by my daughter's February 8, 1996 memorandum, she stated [p. 5] -- by a February 14, 1996 letter[8] -- that she would contact APRL and its then President Pansky about providing me assistance. Indeed, as my daughter's September 18, 1996 letter recites, Ms. Pansky knew nothing about our requests for assistance.

The foregoing recitation should suffice to make you understand that the exalted heights of professionalism to which you wish to hold the ABA and its committees are more in the realm of rhetoric than reality. The very entities within the ABA charged with promulgating and espousing standards of honesty, decency, and civility are controlled by a leadership which shamelessly jettisons the most *minimal*

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[6] Annexed as Exhibit "B" to my daughter's January 17, 1997 memorandum to the Center for Professional Responsibility and affiliated committees.

[7] Annexed as Exhibit "A" to my daughter's September 18, 1996 letter to APRL President Burke.

[8] Annexed as Exhibit "D" to my daughter's September 18, 1996 letter to APRL President Burke.

standards of ethics and professional responsibility so as to ignore -- without explanation or by misrepresentations and outright lies -- the transcending issues before them, affecting not just the rights of a single ABA member, but of thousands of New York lawyers, the profession, and, indeed, society as a whole.

These larger societal issues now include the obligation of the organized bar to act in the face of evidentiary proof that the judicial process on the federal level has been corrupted. No longer is the judicial corruption responsible for my retaliatory suspension and its unlawful perpetuation confined to the state level. This is highlighted by CJA's public interest ad, "*Restraining 'Liars in the Courtroom' and on the Public Payroll*" (Exhibit "A-2"), which appeared in the August 27, 1997 New York Law Journal two days before oral argument of my appeal to the Second Circuit from the district court's summary judgment dismissal of my §1983 federal action challenge to New York's attorney disciplinary law, as written and as applied. Events at the argument -- and subsequent thereto -- dramatically demonstrate the Second Circuit's unabashed subversion of any semblance of the rule of law and administration of justice. This is fully-documented by the post-appellate proceedings, which are enclosed with the rest of the record so that you can direct this important public-interest case to appropriate ABA committees for *amicus* and other assistance. This should include referral to *each* of the ABA entities which had comprised the ABA Task Force on Judicial Removal, charged with monitoring the work of the National Commission on Judicial Discipline and Removal: the National Conference of Federal Trial Judges, JAD; Appellate Judges Conference, JAD; Standing Committee on Judicial Selection, Tenure and Compensation; Standing Committee on Federal Judicial Improvements; the Standing Committee on Ethics and Professional Responsibility; and Section of Litigation. An inventory of the case file transmittal is annexed as Exhibit "C".

As the very first page of my Petition for Rehearing with Suggestion for Rehearing *In Banc* to the Second Circuit states, this case is not only *en route* to the U.S. Supreme Court on a petition for a writ of certiorari, but will be presented to the House Judiciary Committee to

refute the National Commission on Judicial Discipline and Removal's conclusions about the adequacy of "peer disapproval" and the "appellate process" as "fundamental checks" of judicial misconduct -- and to establish how unabashedly the federal judiciary has eviscerated the recusal statutes, 28 U.S.C. §144 and §455. In that regard, I ask you to *personally* examine -- in addition to my Petition for Rehearing with Suggestion for Rehearing [p. 6] *In Banc* -- the other post-appellate proceedings: my October 10, 1997 recusal/vacatur for fraud motion, and my two incorporated-by-reference judicial misconduct complaints against the district judge and against the Second Circuit panel, filed under 28 U.S.C. §372(c), "the 1980 Act".

As you know, the ABA Task Force on Judicial Removal rendered a Report to the House of Delegates in February 1994, endorsing "generally" the National Commission's recommendations as "seem[ingly] sound and likely to make the processes of judicial discipline and removal more effective and efficient". It specifically endorsed three Commission recommendations to improve the 1980 Act (Exhibit "D"). These three recommendations were then approved by the ABA, including the recommendation that the Circuit Councils establish committees, broadly-representative of the bar and possibly including "informed lay persons", to assist in handling §372(c) complaints and whose function would include "to defend...lawyers against retaliation by judges". Yet, as of this date, the Second Circuit has no such committee and, according to Jeffrey Barr, the Assistant General Counsel at the Administrative Office and its "point man" on judicial discipline issues, there are no such committees in the other Circuits. This, notwithstanding that in March 1994 the Judicial Conference agreed to recommend to the Circuits and relevant courts that they consider the creation of such committees "or other structures or approaches" for "the purpose of assuring that justified complaints are brought to the attention of the judiciary without fear of retaliation". Nor has the federal judiciary followed through with the other specific ABA-endorsed recommendation that it create and disseminate a body of precedential decisions relative to §372(c) complaints -- albeit the Judicial Conference endorsed reasoned decisions and agreed to urge that precedential orders be submitted for publication to West Publishing Company and Lexis. Mr. Barr, while

conceding that he does not believe that there are more than a handful of precedential opinions that have been published beyond the 15 referred to in his underlying 1993 study for the National Commission on Judicial Discipline and Removal[9], to which he served as consultant, has refused to run an electronic WestLaw/Lexis search so as to verify the precise number.

Last year, in its much heralded report, the ABA's Commission on Separation of Powers and Judicial Independence did *not* identify the federal judiciary's failure to implement these two important recommendations relative to the 1980 Act[10]. This ABA Commission -- on which the former Chairman of the National Commission on Judicial Discipline and Removal, Robert Kastenmeier sat as a member [p. 7] and whose "reporter", Charles Gardener Geyh, had been a liaison to the National Commission[11] -- lauded the National Commission's examination of the 1980 Act as "rigorous" (Exhibit "E", at p. 34) and "a careful, empirical study" (Exhibit "E", at p. 59) and described the Act as "a powerful mechanism for holding judges accountable for misconduct" (Exhibit "E", at p. 59).

Since the data from which the National Commission based its

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[9] Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, "*Judicial Discipline: Administration of the 1980 Act*", at p. 544.

[10] As to the third recommendation to increase awareness of the 1980 Act, the *only* recommendation identified by the ABA Commission on Separation of Powers and Judicial Independence in the body of its Report states that efforts by state and local bar associations to elicit such awareness "have not been forthcoming" (Exhibit "E", p. 58).

[11] Professor Geyh's consultant's study to the National Commission, entitled "*Means of Judicial Discipline Other than Those Prescribed by the Judicial Discipline Statute, 28 U.S.C. §372(c)*", is reprinted in Research Papers of the National Commission on Judicial Discipline and Removal, Vol. I, pp. 713-866. As to the efficacy of the recusal statutes, 28 U.S.C. §144 and §455, Professor Geyh's study asserted: "...judicial construction has limited the statutes' application, so that recusal is rare, and reversal of a district court refusal to recuse, is rarer still." (at p. 771).

conclusions as to the efficacy of the 1980 Act is *not* publicly-accessible -- because the federal judiciary made complaints filed thereunder "confidential" -- the ABA should be interested in an unobstructed view of how complaints are actually handled. The Second Circuit's disposition of my §372(c) complaints against the district judge and Second Circuit panel would be a good start -- beginning with whether, as I have requested, the complaints are transferred to another Circuit.

As the 1997 Report of the ABA Commission on Separation of Powers and Judicial Independence identifies (Exhibit "E", pp. 34, 59), the House Judiciary subcommittee has already held a hearing on legislation that would amend the §372(c) statute to require transfer of judicial misconduct complaints to different circuits for resolution (H.R. 1252, §4). It appears that the ABA Commission believes that this legislation and others would be defeated were Congress familiar with the National Commission's Report. In that context, the ABA Commission expressly recommended that:

> "Congress should hold hearings on and consider appropriate responses to the 1993 Report of the National Commission on Judicial Discipline and Removal. That process should be completed before Congress considers any proposals for additional legislation or constitutional amendments in the area of judicial discipline and removal." (at p. 59).

We agree with the ABA Commission that Congress should hold hearings on the National Commission's Report -- and have already notified the House Judiciary Committee of our endorsement of that recommendation. Such hearings, however, will convince Congress that it has been disserved and deceived by the National Commission's Report as to the adequacy of existing disciplinary and removal mechanisms and that sweeping change is required[12]. In the event you

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[12] It has also been deceived by the National Commission's presentation on the subject of the federal judicial appointments process. The inadequacy of screening of

have not seen Elena's article about [p. 8] the National Commission's methodologically-flawed and dishonest Report, including her description of our *direct, first-hand* experience with the National Commission, the House Judiciary Committee, and the Administrative Office of U.S. Courts, published in the Massachusetts School of Law's journal, The Long Term View, a copy is annexed (Exhibit "F"). We invite the ABA to comment on the article *in advance* of such congressional hearings -- and would be pleased to provide the substantiating documentation on which the article is based. Congress would undoubtedly find it extremely useful if the ABA would also place its comments about the article in the context of what is demonstrated by the enclosed file of my §1983 federal action, including the two §372(c) judicial misconduct complaints it contains. We firmly believe that Congress will be more interested in the ABA's response to the readily-verifiable specifics of flagrant judicial corruption on state and federal levels, documented by that file, rather than in the generalities that characterize its Commission's 1997 Report[13]. We also believe that Congress will want the ABA to explain its wilful refusal to advance the National Commission's suggestion as to:

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judicial candidates, both *pre*-nomination and *post*-nomination, including the *pre*-nomination screening performed by the ABA's Standing Committee on Federal Judiciary, is well known to the ABA -- having received from us voluminous evidentiary materials -- none of which it has chosen to address. CJA has repeatedly brought the ABA's ethical responsibility in this matter to the attention of its leadership -- to no avail. Indeed, I understand from my daughter that in her telephone conversation with you three weeks ago, thereafter reiterated in her written communications to you, she expressly requested that an advisory opinion be obtained from the ABA's Committee on Ethics and Professional Responsibility as to its duty to retract ratings which were fraudulently-obtained and demonstrated to be the product of inadequate ABA investigation, as well as its obligation to take remedial steps to improve its Standing Committee's defective investigative procedures and to ensure the integrity of the Senate's demonstrably sham judicial confirmation process.

[13] These include its blanket endorsement of appeal as a corrective for judicial "error" and its unqualified assertion that a judge's decision should not subject him to discipline, either by way of impeachment or under 28 U.S.C. §372(c). (*See, inter alia*, pp. 48-49, p. 34: fn. 132).

> "the birth and nourishment of a culture in which the bar stands together...in defending lawyers against retaliation against vindictive judges". (National Commission's Report, p. 101)

and wilful refusal to address a cert petition particularizing retaliatory judicial misconduct during a period in which the ABA was creating its Commission on Separation of Powers and Judicial Independence, to put forward a programmatic outline for defending judges against "unjust criticism".

[p. 9] It is up to you, as ABA President, to restore credibility to the ABA and demonstrate that it can meet its ethical and professional responsibility -- when the issues concern judicial misconduct and the retaliatory suspension of an attorney's license. Only by so doing can the high-sounding platitudes of the ABA codes of ethics for attorneys and judges be perceived by the bar and the public at large as having some practical application.

Best personal regards,

s/

DORIS L. SASSOWER, Director
Center for Judicial Accountability, Inc.

Enclosures

cc: American Bar Foundation
Center for Professional Responsibility
(and four constituent Standing Committees of Ethics and Professional Responsibility, Professional Discipline, Professionalism, and Lawyer Competence)
Association of Professional Responsibility Lawyers
U.S. House Judiciary Committee
Administrative Office of U.S. Courts

PETITIONER'S LETTER TO ABA PRESIDENT PHILIP S. ANDERSON, DATED AUGUST 11, 1998, TRANSMITTING THE CERT PETITION

BY FAX: 501-372-6453
BY EXPRESS MAIL: EM025604719US

August 11, 1998

Philip S. Anderson, President
American Bar Association
c/o Williams & Anderson
111 Center Street, Suite 2200
Little Rock, Arkansas 72201

RE: The ABA's Immediate Responsibilities under its Model Rules of Professional Conduct

Dear President Anderson:

I congratulate you as you don the mantle of the ABA presidency. As a longtime ABA member who, in 1976, was the first woman to run for Assembly Delegate to the House of Delegates, with the endorsement of more than a dozen bar presidents, including Whitney North Seymour, Francis Plimpton, and Leon Jaworski, as well as of Associate Justice of the U.S. Supreme Court, Tom Clark, and your immediate presidential predecessor, Jerome Shestack (Exhibits "A-1", "A-2"[1]), I can attest from direct, first-hand experience, most recently with Mr. Shestack, that the ABA is sorely in need of leadership.

It was because of Mr. Shestack's lack of leadership that I and my daughter were precluded from attending the ABA Annual Meeting, at which you were installed. Indeed, although Mr. Shestack made

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[1] For your further information, a copy of my biographic listing, as it appeared in the Martindale-Hubbell Law Directory (1989 ed.), is annexed as Exhibit "A-3".

professional responsibility and ethical standards the cornerstone of his presidency (Exhibit "B-2"), if he is to be judged by his performance rather than his preaching, this did not include fidelity to ABA rules requiring attorneys to report judicial misconduct and to ensure the accuracy of its ratings of judicial candidates and integrity of judicial screening procedures. As ABA president, Mr. Shestack permitted ABA committees and associated entities -- and, indeed, the ABA's General Counsel -- to shirk these responsibilities and to engage in grossly unprofessional and unethical conduct toward myself and my daughter as we sought to get the ABA to uphold these responsibilities. This did not, however, keep [p. 2] Mr. Shestack from proclaiming, as he ended his presidency, that the ABA had "fulfilled th[e] commitment" of professionalism he had urged, one embracing "integrity and ethics", "civility to enlarge human dignity and worth", "obligations to the rule of law and the justice system", and "pro bono service" (Exhibit "B-2") and from rhetorically trumpeting "judicial independence" as an ABA *cause celebre* (Exhibit "B-1") -- but without reference to profoundly serious issues of judicial discipline and selection squarely before him.

Now that you are ABA President, you inherit Mr. Shestack's "unfinished business". This includes addressing issues of judicial discipline, judicial selection, and retaliation against judicial whistleblowers, presented in reams of correspondence from the Center for Judicial Accountability, Inc. (CJA) -- the national nonpartisan, nonprofit citizens' organization which I and my daughter co-founded. Mr. Shestack wholly failed to respond to those letters, much as his predecessors, N. Lee Cooper and Roberta Cooper Ramo, wholly failed to respond to our similar letters when they were incumbent ABA Presidents.

By copy of this letter to Mr. Shestack, Mr. Cooper, and Ms. Ramo, I request that they promptly arrange for our voluminous correspondence with them to be transmitted for your review. Their inaction and dereliction, as well as that of their predecessors, Talbot D'Alemberte and Michael McWilliams, during their tenure as ABA Presidents, have caused irreparable injury, not just to me personally, but to our system of justice and the public welfare. According to your

column in the August 4, 1998 National Law Journal (Exhibit "B-3"), appearing beside Mr. Shestack's own (Exhibit "B-2"), the ABA will be sponsoring a symposium on "trust and confidence in the U.S. system of justice", as well as an invitational symposium on the "origins and reasons for our three-branch government in 'Bulwarks of the Republic: Judicial Independence and Accountability'". As hereinbelow summarized, the correspondence your predecessors callously ignored and "sat on" all these years is directly relevant to both these areas of ABA exploration and should ultimately be referred to the ABA committees involved in the planning and development of these symposia, with notice given to symposia participants that such empirical evidence sheds a great deal of light on the subjects about which they will be speaking. Indeed, based on those materials and CJA's demonstrated expertise and "in-the-trenches" experience, we should be invited speakers at the symposia.

More immediately, such correspondence must be personally reviewed by you because, due to the aforesaid inaction and dereliction of your presidential predecessors, there are two critical situations, requiring your *priority* attention[2] relating to judicial discipline and judicial selection -- both on the federal level.

[p. 3] The ABA's wilful failure to protect the public interest in judicial selection and discipline was focally presented in CJA's April 24, 1998 testimony before the Commission on Structural Alternatives for the Federal Courts of Appeals, to which Mr. Cooper is vice chair. Mr. Shestack was sent a copy of that testimony under our May 5th letter to him (Exhibit "F")[3], with no response.

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[2] So as not to lose valuable time, copies of CJA's correspondence with Mr. Shestack are annexed to this letter -- but *without* their substantiating exhibits. Except where otherwise indicated, none of the documentation the correspondence enclosed is transmitted herewith.

[3] A copy of that testimony is included in the enclosed compendium [R-42-60], supporting our written statement to the House Judiciary Committee in connection with its June 11, 1998 "oversight hearing of the administration and operation of the federal judiciary", *infra*.

(1) ***FEDERAL JUDICIAL DISCIPLINE: AMICUS SUPPORT, DISCIPLINARY AND CRIMINAL REFERRALS, LEGISLATIVE ACTION:***

Now before the U.S. Supreme Court on a petition for a writ of certiorari is the §1983 federal action, *Sassower v. Mangano, et al.*, docket #98-106. The issue underlying such petition is the unconstitutionality of New York's attorney disciplinary law, as written and as applied. It involves the immediate, indefinite, and unconditional "interim" suspension of my law license under a statutorily-unauthorized court rule -- *without* written charges, *without reasons*, *without* findings, *without* a hearing by New York judges who, thereafter, denied me *any* post-suspension hearing, *any* appellate review, and who also subverted independent review by refusing to recuse themselves from the special proceeding I brought against them for their unconstitutional and illegal conduct. At the time of my suspension, I was doing public interest work, as espoused by the ABA generally and by Mr. Shestack, in particular (Exhibit "B-2"): I was working *pro bono* to improve the administration of justice -- an area of the law to which I had been introduced by the groundbreaking work of another ABA president, a leading reformer of his day, Arthur T. Vanderbilt, who, as Chief Justice of the New Jersey Supreme Court, was my first employer after my graduation from New York University Law School more than 40 years ago. Indeed, I was defending the independence of the New York state judiciary from the manipulations of leaders of the two major political parties. These leaders had entered into a written Deal in 1989, trading seven judgeships over a three-year period by cross-endorsement. The Deal, which bound judicial nominees to early resignations and a split of party patronage, was implemented at judicial nominating conventions violating New York's Election Law. This was the subject of the Election Law case of *Castracan v. Colavita*, which I had brought *pro bono* on behalf of Democratic and Republican petitioners, who were also acting *pro bono publico*. Such litigation challenge was "thrown" by New York state judges who wilfully disregarded elementary legal standards and falsified the factual record, while other state judges retaliated against me by unlawfully suspending my law license so as to silence and stigmatize me.

There is, however, a more transcendant threshold issue presented by the cert petition: the Second Circuit's annihilation of *all* cognizable adjudicatory standards, including fraudulent decisions, fabricating and falsifying the factual record. By such conduct, the Second Circuit protected the defendant state **[p. 4]** judges and public officials, who had no legitimate defense to the material allegations of my Verified Complaint. The Second Circuit's judges corrupted the judicial/appellate processes, including the very statutes designed to ensure judicial impartiality, 28 U.S.C. §§144 and 455, as well as the federal judicial disciplinary statute, 28 U.S.C. §372(c).

It was precisely because of Mr. Shestack's much-vaunted championship of professionalism and the ABA's duty to safeguard the rule of law and the administration of justice -- as to which Mr. Shestack promotes his supposed success (Exhibit "B-2") -- that I transmitted to him the full file of *Sassower v. Mangano* under a comprehensive January 26, 1998 letter, seeking *amicus* support and other ABA-assistance (Exhibit "C", at p. 5). Mr. Shestack did not respond to that letter. Nor did he respond to any of my daughter's follow-up letters, to wit, her March 27th letter, which identified that I needed the ABA's help to meet a May 16th deadline for filing the cert petition (Exhibit "D"), her April 8th fax, highlighting that there had been no response to our January 26th and March 27th letters (Exhibit "E"); and her May 5th letter, reiterating our "urgent requests for ABA assistance...[to] meet the rapidly approaching May 16th deadline for the cert petition..." (Exhibit "F").

In short, the only ABA "assistance" I received for this case of "transcending importance to both the legal community and the public at large" (Exhibit "F"), was on the last day for filing the cert petition when the ABA Center for Professional Responsibility belatedly responded to my daughter's several telephone requests by finally faxing the text of, and commentary for, Rule 8.3 of the ABA's Model Rules of Professional Conduct, "Reporting Professional Misconduct" (Exhibit "G"), which by then we already had.

The cert petition was, nonetheless, timely filed -- but only because of the unstinting assistance of my non-lawyer daughter -- whose crude

mistreatment by ABA leadership is referred to in my January 26th letter (Exhibit "C", at pp. 3-4). A copy of the petition, as docketed on July 21, 1998, is enclosed -- as is the notice, just received from the New York State Attorney General, respondents' counsel and himself a respondent, that respondents are waiving their right of response.

In its appendix [A-20], the petition reprints Rule 8.3, as well as Rule 8.4, "Misconduct". Consistent with ABA responsibilities, reflected in the Preamble to its Model Rules of Professional Conduct and particularized by such specific Rules as 8.3 and 8.4, I again request ABA *amicus* support. Such support is requested not only in obtaining Supreme Court review, but also an impeachment investigation by the House Judiciary Committee and criminal investigation by the U.S. Department of Justice. Such action is fully mandated by the record of *Sassower v. Mangano*, transmitted to Mr. Shestack more than half a year ago. As the cert petition reflects (at p. 24), the record in *Sassower v. Mangano* has already been transmitted to the House Judiciary Committee. Such transmittal was accompanied by two Memoranda, dated March 10, 1998 and March 23, 1998. The latter directly referred to my January 26, 1998 letter to Mr. Shestack [A-303-4] and called upon the ABA to respond to the uncontroverted evidence of judicial corruption presented by the *Sassower v. Mangano* file -- evidence empirically refuting the "all's **[p. 5]** well" conclusions of the 1993 Report of the National Commission on Judicial Discipline and Removal, relied upon in the 1997 Report of the ABA's Commission on Separation of Powers and Judicial ndependence. These Memoranda are reprinted in the cert petition's appendix [A-295; A-301] because they are part of my incorporated-by-reference §372(c) judicial misconduct complaints against the federal district and appellate panel judges involved. Mr. Shestack previously received these Memoranda with my daughter's March 27th letter (Exhibit "D"), which highlighted that the March 23rd Memorandum challenged the ABA to respond to the principle asserted therein that:

> "Judges who, for ulterior purposes, render dishonest decisions – which they *know* to be devoid of factual or legal basis -- are engaging in impeachable conduct" [A-315],

and further that

> "the district and circuit judges in *Sassower v. Mangano* should be among the first so-investigated for impeachment based on the "*readily-verifiable* evidentiary record...of [their] outright fraud." [A-316]

Such guiding principle is asserted in the cert petition itself (at pp. 25-26), which notes that the ABA's Commission on Separation of Powers and Judicial Independence -- like the Report of the National Commission on Judicial Discipline and Removal before it -- obscured and failed to identify when judicial decisions may properly be the subject of disciplinary investigation and impeachment.

To enable the ABA to additionally support my efforts to obtain a criminal investigation of the subject federal judges -- as well as of the state judges and other public officials they protected -- enclosed is a full copy of my daughter's July 27th letter to Lee Radek, Chief of the U.S. Justice Department's Public Integrity Section, transmitting to him a copy of the *Sassower v. Mangano* record. Such letter additionally seeks the Justice Department's support for my *amicus* request to the U.S. Solicitor General, as set forth in my daughter's July 20th letter to Solicitor General Waxman, a copy of which is also enclosed.

In view of the shortness of time for the ABA to participate at this all-important cert stage, where *amicus* support for Supreme Court review would need to be submitted by the August 19th date on which respondents -- had they not waived their right of response -- were due to have submitted their opposing brief, I request -- at minimum -- that the ABA take emergency action to communicate with the Solicitor General its endorsement of my request for his *amicus* support for the cert petition and that it reinforce his own obligations under Rule 8.3 to make disciplinary and criminal referrals consistent with the record.

Obviously, in the event the Supreme Court does not grant review of the petition, the ABA's own obligations to make disciplinary and criminal referrals under Rule 8.3 will be all the more essential -- as

well as its duty to advocate legislative changes, among them provisions reinforcing 28 U.S.C. §§144, [p. 6] 455, and 372(c).

So that the ABA can have a full record of CJA's own legislative advocacy relative to these provisions, and of our protest against the House Judiciary Committee's abandonment of its duty to address judicial misconduct complaints, whether it receives those complaints directly or they are received by the federal judiciary, enclosed is a copy of CJA's statement submitted for the record of the House Judiciary Committee's June 11, 1998 "Oversight Hearing of the Administration and Operation of the Federal Judiciary". Consistent with ABA rhetoric about ethical duties, the public has a right to expect the ABA to examine and vigorously follow through with the serious issues there presented as to the destruction of fundamental judicial and legislative checks on federal judicial misconduct and corruption.

(2) *FEDERAL JUDICIAL SELECTION: ABA ADVISORY OPINION TO THE SENATE JUDICIARY COMMITTEE*

Now before the Senate Judiciary Committee is the nomination of Alvin K. Hellerstein to the District Court of the Southern District of New York. Mr. Hellerstein would never have been nominated for a federal judgeship but for Mr. Shestack's unprofessional failure to respond to CJA's crucially important correspondence with him in early January of this year: my daughter's letters, dated January 8th, January 9th, January 12th, and her fax dated January 14th (Exhibits "J"- "M").

The substance of those letters concerned the ABA's ongoing duty under Rule 8.2 of its Model Rules of Professional Conduct to retract the favorable rating its Standing Committee on Federal Judiciary had conferred upon Westchester County (NY) Executive Andrew O'Rourke, who, in November 1991, was nominated by President Bush to the district court of the Southern District of New York. Such letters to Mr. Shestack were occasioned by the fact that in December 1997, New York Governor George Pataki nominated Mr. O'Rourke for a State Court of Claims judgeship. According to press reports,

Mr. O'Rourke deflected questions about his qualifications for the Court of Claims judgeship by citing the fact that the ABA and the Association of the Bar of the City of New York ("the City Bar") had both approved his 1991 federal court nomination.

Mr. Shestack knew that the aforesaid ABA and City Bar ratings were insupportable and NOT the result of meaningful investigation, which would have *readily* revealed Mr. O'Rourke's pivotal misrepresentations about his qualifications. More than five years earlier, under a coverletter dated May 22, 1992 (Exhibit "H-2"), we had sent Mr. Shestack a copy of our 50-page critique of Mr. O'Rourke's qualifications, which had "pierced the veil of secrecy" shrouding ABA and City Bar screening by comparing their questionnaires to that of the Senate Judiciary Committee. The letter, which enclosed a copy of our May 19, 1998 letter to then ABA President D'Alemberte, asked for his support, as a leader of the bar, for our request to then Senate Majority Leader George Mitchell for a moratorium of all judicial confirmations and an official investigation of the deficiencies of the federal judicial screening process documented by our critique. Indeed, a week earlier, we had sent Mr. Shestack a copy of that [p. 7] moratorium request when it was still in draft (Exhibit "H-1"). Thereafter, we sent him a copy of our June 2, 1992 letter to Majority Leader Mitchell, constituting a supplement to our critique and reinforcing our request with information further establishing the gross deficiencies of the City Bar's screening, to wit, its actual "screening out" of information adverse to Mr. O'Rourke (Exhibit "H-3").

Enclosed with my daughter's January 8, 1998 letter to Mr. Shestack (Exhibit "J")[4] was a long series of letters to and from ABA leaders, collected in a compendium, spanning from May 1992 to November 1993. Specifically highlighted was a November 11, 1992 letter to then ABA President J. Michael McWilliams, which, after quoting Rule 8.2(a) of the ABA's Model Rules of Professional Conduct, asserted:

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[4] The enclosures to my daughter's January 8th letter to Mr. Shestack are itemized in her January 9th letter to him (Exhibit "K").

> "In the event the ABA leadership does not recognize its obligation to retract a rating it knows to be false, we ask that you, as ABA President, refer our critique and all correspondence relative thereto to the ABA's Standing Committee on Ethics and Professional Responsibility with a request for a formal opinion.

My daughter's January 8, 1998 letter reasserted this position and urged immediate corrective steps to forestall Mr. O'Rourke's otherwise inevitable rubber-stamp confirmation. This was reiterated in her subsequent January 9th and January 12th letters (Exhibits "K" and "L").

None of these letters impelled Mr. Shestack to respond to us or to take any discernible action, with the result that Mr. O'Rourke was confirmed on January 13th to the New York State Court of Claims. This, however, did not end the ABA's ethical and professional responsibilities – a fact pointed out by my daughter's January 14th fax to Mr. Shestack, drawing his attention to "business that should be on the ABA agenda" (Exhibit "M"). Such business included: developing a mechanism for retracting ratings; obtaining an advisory opinion from the Committee on Ethics and Professional Responsibility on the ABA's duty to make retractions; and improving the Standing Committee's demonstrably deficient screening procedures, *inter alia*, by including CJA as among those "likely to have information" on judicial candidates, particularly those in the Second Circuit. Indeed, enclosed was CJA's December 2, 1997 letter to Patricia Hynes, the Second Circuit's representative on its Standing Committee on Federal Judiciary, with a copy to Irene Emsellem, the ABA's liaison to that Committee, that we had information establishing the unfitness of two candidates for federal judgeships it might be evaluating, one of them being Alvin Hellerstein (Exhibit "I-1"). The December 2nd letter further stated that if the Standing Committee had already evaluated Mr. Hellerstein that it notify the Justice Department and White House of our proffered information bearing on his unfitness.

[p. 8] Five months later, on May 2, 1998, Mr. Hellerstein's nomination to a federal judgeship was announced in a notice in the

New York Law Journal. No one from the ABA's Standing Committee, the Justice Department, or White House contacted us prior thereto -- even to the limited extent of ascertaining from us the information establishing Mr. Hellerstein's judicial unfitness.

According to Ms. Emsellem, the ABA will not disclose when the Standing Committee completed its evaluation of Mr. Hellerstein. Nor will it confirm or deny whether it was before or after its receipt of our December 2, 1997 letter (Exhibit "I-1") or whether the Standing Committee communicated to the Justice Department and White House notification of our opposition to Mr. Hellerstein's nomination, as we had requested. However, this would NOT be the first time that the ABA has knowingly "screened out" information bearing adversely on a judicial candidate. Indeed, it engaged in a similar practice two years ago[5] -- as summarized by CJA's May 27, 1996 letter to Senate Judiciary Committee Chairman Orrin Hatch, submitted in connection with the Judiciary Committee's hearing on "The Role of the American Bar Association in the Judicial Selection Process". A copy of that letter, as reprinted in the record of that hearing (S. Hrg. 104-497) (Exhibit "N"), was furnished to Mr. Shestack with my daughter's January 8th letter to him (*see* Exhibit "K"). The ABA's failure to take any corrective steps to ensure that adverse information is not "screened out" -- including removal of Ms. Hynes, who had engaged

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[5] In 1995, the ABA purported to "screen" New York Supreme Court Justice Lawrence Kahn for a district court judgeship for the Northern District of New York. Justice Kahn was responsible for "throwing" the politically-explosive *Castracan v. Colavita* Election Law case on the trial level and protecting the respondent democratic and republican party leaders and their judicial nominees -- a fact I particularized in an October 31, 1995 letter to Ms. Hynes which transmitted a full copy of the case file (Exhibit "I-2"). As reflected in CJA's May 27, 1996 letter to Chairman Hatch, Ms. Hynes never thereafter contacted me for an interview and ultimately returned the file in uncreased, "untouched-by-human-hands" condition. CJA's protests to the then Chairman of the Standing Committee were crudely rebuffed. It was only after the Senate Judiciary Committee's sham confirmation "hearing" on Justice Kahn's nomination that we learned that the Standing Committee had conferred upon him a mixed "qualified/not qualified" rating [*See* CJA's June 28, 1996 letter to Chairman Hatch (at p. 11 and Ex. "D")].

in such prior misconduct -- has led to the present situation, involving Ms. Hynes, who has, nonetheless, continued to be the Standing Committee's Second Circuit representative, responsible for its so-called "investigations" of candidates for federal judgeships in the Second Circuit.

So that the record is clear, the basis for our opposition to Mr. Hellerstein is his complicity in the dysfunctional federal judicial screening process, documented by our 1992 critique and supplement. Much as we called upon the ABA to take corrective action, such as retracting its insupportable rating of Mr. O'Rourke and joining in our call for a moratorium and official investigation, we likewise called upon the City Bar to do so. In the fall of 1992, its then President, John Feerick, directed our critique [p. 9] to Mr. Hellerstein, then Chairman of the City Bar's Judiciary Committee. After "dragging his feet", Mr. Hellerstein, who received from us a letter in which we quoted DR 8-102(a) of New York's Code of Professional Responsibility and cited Rule 8.2(a) of the ABA's Model Code of Professional Conduct, finally responded with a three-sentence letter, dated February 3, 1993, in which he claimed to have "read" the materials, yet three times referred to Mr. O'Rourke as "Judge O'Rourke" and stated "There is nothing further for this Committee to do with respect to Judge O'Rourke".

So that you can make your own assessment of Mr. Hellerstein's candor and judgment when, as Chairman of the City Bar's Judiciary Committee, he wrote these words -- a foretaste of the lack of integrity and judgment that can be expected from him should he be confirmed as a federal judge -- enclosed is a copy of the 1992 critique and supplement, as well as the exchange of correspondence with Mr. Hellerstein and, prior thereto, with the City Bar, collected in a compendia similar to the compendia collecting our correspondence with the ABA. [*See*, in particular, Exhibits "L"- "P" of that compendium].

There are three possibilities to account for Mr. Hellerstein's February 3, 1993 letter -- all disqualifying him for a federal judgeship or any other public office: (1) that he lacks competence and was unable to

grasp the evidentiary presentation that was before him; (2) that he had not actually "read" the critique and other materials transmitted to President Feerick, notwithstanding his affirmative representation that he had; (3) that he knew that if he took corrective steps and exposed the dysfunction of the City Bar's screening process, as well as that of the federal judicial screening process, he would be jeopardizing his own judicial aspirations -- now finally verging on fulfillment.

As set forth in our July 30, 1998 and August 3, 1998 letters to the Senate Judiciary Committee (Exhibits "O-1",. O-2"), it is CJA's position that Mr. Hellerstein put his own federal judicial aspirations above the public welfare, whose interest in meaningful screening and truthful ratings he was duty-bound to ensure -- but did not.

Clearly reflected by these two letters is the fraudulent and sham nature of the Senate Judiciary Committee's own confirmation process -- as to which the ABA has long been aware, but about which it has done nothing. Indeed, my daughter's January 9, 1998 letter to Mr. Shestack (Exhibit "K") offered him a copy of the compendium of our correspondence with the Senate Judiciary and Senate leadership relating to our 1992 critique. Such compendium, as well as the compendium of our correspondence with the ABA and City Bar, had been transmitted to the Senate Judiciary Committee under CJA's May 27, 1996 letter to Chairman Hatch (Exhibit N"). Mr. Shestack was also specifically advised to obtain from Ms. Emsellem a copy of our June 28, 1996 letter to Chairman Hatch -- a letter focusing on the dysfunctional and sham post-nomination screening employed by the Senate Judiciary Committee for federal judicial nominees, including its cover-up of the ABA's demonstrably deficient and dishonest screening.

[p. 10] The Senate Judiciary Committee, whose characteristically perfunctory confirmation "hearing" on Mr. Hellerstein's nomination took place on July 30, 1998, will not be voting on confirmation until after it returns from recess on September 1st. Consequently, the ABA still has time, albeit brief, to meet its ethical and professional duty to take corrective steps. CJA is already preparing a written submission to the Senate Judiciary Committee, opposing Mr. Hellerstein's

confirmation for the above-stated reasons and again protesting the Senate Judiciary Committee's sham confirmation procedures, much as we had in our June 28, 1996 letter to Chairman Hatch. It is appropriate for the ABA to provide the Senate Judiciary Committee with its opinion both as to Mr. Hellerstein's assessment of the critique, supplement, and related correspondence -- and the claim made by Leah Belaire, Senate Judiciary Committee investigative counsel, who telephoned us after we faxed the Senate Judiciary Committee our August 3, 1998 letter (Exhibit "O-2"), that she had reviewed those materials and had found nothing objectionable in Mr. Hellerstein's response. Ms Belaire further indicated that the Senators were apprised of such materials and had, likewise, shared in that assessment.

A copy of this letter is being sent to Ms. Belaire so that if I have not accurately represented her statement to us, she can correct it. If true and correct, such shocking statement only further reinforces the exigent need for ABA leadership to stop the "rubber-stamp" and palpably dishonest confirmation of Mr. Hellerstein, who -- based on his above-described performance of cover-up and protectionism of powerful, vested interests as Chairman of the City Bar's Judiciary Committee -- can be expected to engage in the same kind of cover-up and protectionism as a federal judge as is at issue in *Sassower v. Mangano, et al.*

CONCLUSION

The aforesaid issues of federal judicial discipline and selection, including the dysfunction of both the House and Senate Judiciary Committees, as well as the unconstitutionality of New York's attorney disciplinary law, employed by the state judiciary to retaliate against judicial whistle-blowing attorneys, demand *immediate* ABA response to protect the public interest. All relevant documentary evidence has long been in the possession of the ABA, or proffered to it.

If the public is to have any respect for the ABA's ongoing campaign for "judicial independence" and its defense of judges against "unjust criticism", the ABA must be willing to confront the threat to "judicial

independence" coming from its own collusive role in politicized processes of judicial selection on the federal level -- and from its refusal to acknowledge and confront "just criticism" of judges, to ensure the integrity of the mechanism by which judges who violate their judicial oaths can be disciplined and removed, and to protect from retaliation lawyers who meet their ethical and professional duties by whistleblowing on political manipulation of the judiciary, judicial corruption, and other abuse of power.

Finally, we note that both you and Mr. Shestack are listed among the supporters of the newly-formed "Citizens for Independent Courts" -- an organization largely underwritten by George Soros. Frankly, [p. 11] we do not understand why the ABA and bar associations throughout the country, whose officers and directors earn incomes at the upper tier of society, do not have more than ample means and prestige, including public visibility, to defend judges from "unjust criticism" -- *without* benefit of Mr. Soros' largesse. It certainly is misleading and offensive that a *non*-membership organization, supported by politicians and lawyers like Mr. Shestack, who have deliberately betrayed the public on judicial selection and discipline issues, nonetheless calls itself "Citizens for..."

To enable Mr. Soros to get the maximum return on his misguided investment, we have already hand-delivered to Citizens for Independent Courts extensive materials: a copy of the *Sassower v. Mangano* cert petition, CJA's written statement to the House Judiciary Committee, and our 1992 critique of the federal judicial screening process including the three compendia of correspondence and our June 28, 1996 letter to Chairman Hatch. Also transmitted was CJA's August 1996 correspondence with Alliance for Justice, Free Congress Foundation, Common Cause and the Twentieth Century Fund, endeavoring to overcome the dysfunctional and politicized federal judicial selection process, by creating a coalition for non-partisan reform[6].

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[6] As illustrative, enclosed is a copy of CJA's August 13, 1996 letter to Nan Aron, President of Alliance for Justice and a featured speaker at ABA programs, who

If Citizens for Independent Courts is to be a credible organization, it must take those materials and rise to the exigent demands of leadership and professional responsibility to which the ABA, under the tenure of your recent presidential predecessors, has thus far shown itself so completely incapable.

Very truly yours,

s/

DORIS L. SASSOWER, Director
Center for Judicial Accountability, Inc.

Enclosures:

(1) *Sassower v. Mangano, et al.* cert petition, S.Ct. Docket #98-106
(2) Waiver by the N.Y.S. Attorney General on behalf of the *Mangano* respondents
(3) 7/20/98 ltr to U.S. Solicitor General Seth Waxman
(4) 7/27/98 ltr to Lee Radek, Chief, Public Integrity Section, U.S. Justice Department
(5) CJA's 6/98 statement to the House Judiciary Committee, with compendium of exhibits
(6) CJA's 1992 critique and 3 correspondence compendia
(7) CJA's 6/28/96 ltr to Senate Judiciary Chairman Orrin Hatch
(8) CJA's 8/13/96 ltr to Nan Aron, Alliance for Justice, with recommendations of Common Cause and Twentieth Century Fund

cc: Jerome Shestack, Esq.

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is also a supporter of Citizens for Independent Courts. Included in that letter were recommendations for reform of the federal judicial confirmation process made by Common Cause and the Twentieth Century Fund in 1986 and 1988, respectively -- virtually all of them unimplemented. Ms. Aron never responded to that letter or our request for the Alliance's views on each of those recommendations. We request to know whether the ABA ever responded to these recommendations. If it did not, we ask that the ABA promptly do so -- and in the context of a statement to the Senate Judiciary Committee regarding its procedures in relation to Mr. Hellerstein's confirmation.

N. Lee Cooper, Esq.
Roberta Cooper Ramo, Esq.
Talbot D'Alemberte, Esq.
Michael McWilliams, Esq.
Leah Belaire, Investigative Counsel, Senate Judiciary Committee
House Judiciary Committee: Subcommittee on Courts and Intellectual Property
ATT: Mitch Glazier, Chief Counsel
ATT: Robert Raben, Minority Counsel
Commission on Structural Alternatives for the Federal Courts of Appeals
ATT: Byron White, Chairman
Irene Emsellem, ABA Governmental Affairs Office
Patricia Hynes, Standing Committee on Federal Judiciary, Second Circuit Represenative
Citizens for Independent Courts
ATT: Virginia Sloan, Executive Director
Alliance for Justice
ATT: Nan Aron, Executive Director
Free Congress Foundation, Judicial Selection Monitoring Project
ATT: Thomas Jipping, Director

Note: So that the ABA past-presidents who are recipients of this letter can better meet their duty under ABA Model Rules 8.3 and 8.4 to protect the independence of the judiciary, we are enclosing for them copies of the *Sassower v. Mangano* cert petition, the New York Attorney General's waiver, and our letters to the Solicitor General and Justice Department (w/o exhibits). We request that they access CJA's April 24, 1998 statement before the Commission on Structural Alternatives for the Federal Courts of Appeals and our statement to the House Judiciary Committee for the record of its June 11, 1998 "oversight" hearing from CJA's website: www.judgewatch.org .